

SEATTLE - SUMMIT COMMUNICATIONS, INC.

FRANCHISE AGREEMENT

SECTION 1. NATURE AND TERM OF GRANT

1.1 Grant of Franchise.

- (A) The City of Seattle hereby grants to Summit Communications, Inc., a Washington Corporation having its principal place of business in Bellevue, King County, Washington, a franchise to install, construct, operate and maintain a Cable System to provide Cable Services and other services under such terms and conditions as are set forth in this Ordinance.
- (B) Throughout this Franchise, the City of Seattle, Washington shall be referred to as the "City," and Summit Communications, Inc., shall be referred to as the "Grantee."

1.2 Duration of Franchise. The term of this Franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be from the effective date of this Franchise until March 1, 2008, unless terminated earlier as provided herein. This termination date reflects the fact that Grantee's current franchise would not ordinarily expire until March 1, 1998, and that Grantee has sought early renewal.

1.3 Effective Date : December 9, 1996, subject to applicable law and subject to Grantee's written acceptance of its terms within thirty days following the effective date.

1.4 Franchise Not Exclusive. This franchise is not exclusive. The City reserves the right to grant rights or franchises to other persons, and reserves its own right as a municipality to use the Rights of Ways for the same or different purposes allowed Grantee hereunder, by franchise, permit or otherwise; provided, if the City grants any franchise for cable services in Grantee's franchise area on terms that, taken as a whole, are materially less burdensome than this franchise contract, taking into account any difference in the number of subscribers served, the term of the Franchise and all other circumstances affecting the relative burdens, Grantee shall have the right to reopen this Franchise pursuant to Section 21 for the purpose of modifying only those terms of the Franchise that give rise to the material difference and only to the minimum extent necessary to remove the material difference.

1.5 Relationship To Other Laws.

- (A) Grantee's Franchise is subject to all terms, conditions and provisions of this Franchise Ordinance, of Seattle Municipal Code Chapter 21.60 ("SMC 21.60," the Cable Communications Ordinance) as the same is now or hereafter amended, of Title VI of the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Reform Act of 1996, the provisions of each of which are hereby incorporated by reference and made a part of this Franchise. To the extent that this Franchise and SMC 21.60 are inconsistent, the provisions of this Franchise shall control.
- (B) Grantee's Franchise is subject to the Charter of The City of Seattle and to those general ordinance provisions passed pursuant thereto. Nothing in this Franchise shall alter any requirements of the existing codes and ordinances of the City, including those relating to pole attachment, street use permits, fees, taxes, or construction requirements or schedules.
- (C) It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of the Franchise contract for the entire term of the Franchise and, to the extent any provisions have continuing effect, after its expiration. Both parties recognize that the technology of cable television and related technologies are in a state of flux and that regulatory conditions and franchise rights and powers may change drastically during the term of this Franchise. Because of this recognition, the parties agree that the perpetuation of the substantial equivalent of the current statutory and regulatory structure governing cable television is not a condition of this contract, or a fundamental assumption that either party is making in entering into it, and that this contract and all rights and obligations under it shall survive even major changes in, and even the demise of, the applicable statutes, regulations and franchise rights and powers of municipalities.

1.6 Extension of Franchise Term. The City, in recognition of the additional financial burdens of a Small Cable Company as defined in FCC regulations, will grant, in its sole discretion, a five year extension to the franchise, if the following conditions are met:

- (A) Grantee requests the extension of the franchise within 6 months following completion of the seventh year of the franchise;
- (B) Grantee at the time of the request for the extension meets the criteria for a Small Cable Company in the FCC regulations 47 CFR 76.901(e) in effect on January 1, 1996;

- (C) The City determines that it is in the public interest to extend the franchise based on the grantee's performance, technical capability, program offerings and the competitive environment.

SECTION 2. CITY'S PRINCIPLES AND INTENT

It is the intent of the City in entering into this Franchise to:

- (A) Provide for the installation and operation of a Cable System with features meeting the current and future cable-related needs and interests of the community.
- (B) Encourage the widest feasible scope and diversity of programming and other services to all City residents that is consistent with community needs and interests.
- (C) Ensure that telecommunications services of all kinds are offered to City residents on a nondiscriminatory basis;
- (D) Ensure prompt implementation of technical advances in communications technology;
- (E) Provide for ample and fairly allocated access to cable facilities for program producers for government, educational, and public service programming;
- (F) Ensure that rates and charges for basic cable programming, equipment, and service are fair, reasonable and consistent with federal standards;
- (G) Require that the Grantee provide high quality customer service;
- (H) Ensure that the installation and maintenance of cable facilities comply with all applicable City regulations, and do not interfere with the City's use of its own facilities and property;
- (I) Encourage competition among cable operators and between cable operators and other providers of communication services on a fair, economic and equitable basis;
- (J) Protect the City's interests and the health, safety, and welfare of its citizenry;
- (K) Ensure the universal availability of Cable Services within franchise areas on a non-discriminatory basis;
- (L) Provide for immediate, mandatory City access to all Cable Systems in times of civil emergency, per Section 7.8(E).

SECTION 3. DEFINITIONS

For the purpose of this Franchise, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is capitalized.

- 3.1 "Access" means the right of certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, on a nondiscriminatory basis, to use the cable system as provided for in this agreement and under federal and local law , including the right to acquire Programming, to create Programming free from outside control including that of the Grantee, and to distribute and receive Programming over the Cable System.
- 3.2 "Access Channel" means any Channel, or portion thereof, designated for Access and made available by the Grantee at no charge to the designated access manager(s).
- 3.3 "Affiliated Entity" means any enterprise that directly or indirectly owns the Grantee in whole or in part or is owned by the Grantee in whole or in part, or otherwise having ownership or control in common with the Grantee in whole or in part, including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.
- 3.4 "Basic Service" or "Basic Service Tier" means "basic service" and includes, at a minimum, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system) any public, educational, and governmental Access Channel(s) required by the franchise to be carried on the basic tier, and any additional video programming signals or service added to the basic tier by the Grantee.
- 3.5 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by any means, as defined by FCC regulations.
- 3.6 "Buildout" shall mean the completed construction, operation and maintenance of a cable system in accordance with Section 4.3 of this Agreement.

- 3.7 "Cable Operator" means any person or group of persons who provides cable services over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or who otherwise controls the provision of cable services over a cable system.
- 3.8 "Cable Services" means Programming, in any combination, or any other service provided on or in connection with a Cable System.
- 3.9 "Cable System" means all or part of the facility owned, rented, leased or otherwise controlled by Grantee (including plant, facilities, equipment, and closed signal transmission paths, switches, software, hardware, and other processing equipment, antennas, cables, amplifiers, towers, microwave links, studios real and personal property, and any and all conductors, home terminals, converters, remote control units, and all associated equipment or facilities) the purposes of which include distributing Cable Services or Programming or producing, receiving, amplifying, storing, processing, or distributing voice, data, video, multi-media or other forms of electronic, optical or other signals in the Franchise.
- 3.10 "Capital Costs" means the funds expended in connection with the acquisition, installation or construction of equipment, products or other assets the useful life of which is expected to exceed one year.
- 3.11 "Channel" means a radio frequency band capable of carrying combinations of video, audio, digital or other non -video signal. This could be a digitally compressed channel. Where a channel is required to be a 6 megahertz (MHz) channel, a 6 MHz channel shall be provided regardless of whether digital or other means of compression increases its capacity.
- 3.12 "City" means The City of Seattle, a municipal corporation of the State of Washington.
- 3.13 "City Council" means the Council of The City of Seattle.
- 3.14 "Closed Channels" are upstream or downstream channels that are not available for receipt by Subscribers without special equipment or authorization.
- 3.15 "Demarcation Point" means the physical point at which the Cable System enters the subscriber's home or building.
- 3.16 "Designated Access Managers" means the entity or entities designated by the City under Section 6.2.

- 3.17 "Document" or "Records" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, papers, books, book entries, accounts, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex, or telefax messages, memoranda, notes, data, notations, work papers, interoffice communications, inter-departmental communications, minutes, reports, and records of any communications (including telephone or other conversations, interviews, conferences or committee or other meetings), affidavits, statements, summaries, opinions, reports, studies, analyses, formulae, plans, specifications, contracts, licenses, agreements, offers, acceptances, journals, books or records of accounts, summaries of accounts, bills, receipts, balance sheets, income statements, advertisements, desk calendars, appointment books, diaries, lists, tabulations, charts, graphs, maps, surveys, sound recordings, computer records or impressions in any form, microfilm, all other records kept by electronic, photographic, or mechanical means, and things similar to any of the foregoing, however denominated.
- 3.18 "Downgrade Charges" means any charge, rate or financial liability imposed upon a Subscriber for implementing a request for a change or reduction of cable services to less than current services or tiers.
- 3.19 "Downstream Channel" means a Channel capable of carrying a transmission from a Headend to other points on a Cable System, including Interconnection points.
- 3.20 "Dwelling Unit" means "household" as that term is used in the Federal Cable Act, 47 USC §521 et seq. and associated federal regulations.
- 3.21 "Educational Access" means Access for schools and other educational institutions and entities;
- 3.22 "Facility" means any tangible component of a Cable System
- 3.23 "FCC" means the Federal Communications Commission.
- 3.24 "Fiber Optic" refers to a transmission medium of optical fiber cable and the electronics, software and equipment that support delivery of Cable Services by means of the optical fiber cable.
- 3.25 "Franchise" means this franchise agreement.
- 3.26 "Franchise Area" means the area within the City within which the Grantee is authorized to provide Cable Services under this Franchise, and any modification thereof.
- 3.27 "Government Access" means Access for governmental entities or their designees, and includes Access to and from the Internet;

- 3.28 "Grantee's Pro Rata Share" is a fraction the numerator of which is the total number of Grantee's subscribers in this franchise area and the denominator of which is the total number of subscribers of all franchisees in the City.
- 3.29 "Gross Revenues" means, for purposes of franchise fee calculations, all revenue received by the Grantee, or any Affiliated Entity, in whatever form and from all sources, in connection with the operation of Grantee's Cable System, including any revenue generated in whole or in part from any use of any component of the Cable System for any purpose by the Grantee or by others, except as otherwise provided in this franchise. "Gross Revenues" shall include, without limitation, revenue received from advertising, from installations, from sales occurring as a result of home shopping or similar programming, from leased channels, and from sales of guides to programming. "Gross Revenues" shall not include bad debt expense associated with the provision of cable television services in excess of 1.5%, revenues received from telecommunications services or revenues received by third parties unless such revenues would normally be received by a cable operator similarly situated in the ordinary course of the business of providing Cable Services or as compensation for use of the Cable System.

Gross revenues shall also include revenue received during any period regardless of whether it (1) is paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliated Entity; (2) can be matched against an equivalent - expenditure or the goods or services with which the revenue is associated are provided at cost; (3) is characterized, separately identified or accounted for as being for goods, services or fees to be paid to government agencies; and (4) is initially recorded by the Grantee or by an Affiliated Entity.

Gross revenues shall be determined without deduction for (1) any operating expense; (2) any accrual, including, without limitation, any accrual for commissions; or (3) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment, but revenue shall be counted only once in determining gross revenues. Revenues transferred between Grantee and an Affiliated Entity shall be counted only once in determining the gross revenues of both. "Gross Revenues" shall not include funds that the Grantee is legally obligated to collect as sales or similar taxes.

- 3.30 "Guarantor" includes all Parent Corporations.

- 3.31 "Headend" means a facility for signal reception and/or dissemination on the Cable System including all related equipment, such as cable, antennas and wires, satellite dishes, monitors, switches, modulators, computers, software, processors for television Broadcast Signals, equipment for the Interconnection of Grantee's Cable System with adjacent cable systems and for Interconnection of any separate networks which are part of Grantee's Cable System.
- 3.32 "Initial" or "Initially" means as of the effective date of this Franchise.
- 3.33 "Interactive" or "Interactive Services" means two way communication over the cable communications system between the subscriber and program being viewed by the subscriber, in which both act upon and affect in a direct way each other, and which is more than the placing and receiving of an order over the Cable System, such as an order for pay per view services.
- 3.34 "Interconnect," "Interconnected," or "Interconnection" means the provision of everything necessary and appropriate (including technical, engineering, physical, financial, and all other elements) to install and properly maintain an electronic linkage between Grantee's Cable System and Cable Services or any part, designated Channel or signal pathway thereof and any other designated Cable System and Cable Services or any part, designated Channel or signal pathway thereof, with the result that Cable Services of high technical quality may be transmitted between such Cable Systems or Programmers.
- 3.35 "Leased Access Channel" means a Channel or portion of a Channel made available by Grantee for Programming by others for a fee.
- 3.36 "Liquidated Damages" means any requirement imposed on the Grantee to pay specified sums to the City as a result of performance deficiencies identified herein
- 3.37 "Normal Business Hours" means the hours from 8:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 5:00 p.m. Saturday.
- 3.38 "Normal Operating Conditions" means service conditions within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, sun outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
- 3.39 "Parent Corporation" means Summit Communications, Inc., and any entity created by any merger or acquisition of or by Summit Communications, Inc. and includes any other existing or future corporation, entity or person with greater than fifty percent ownership, or control, over Grantee.

- 3.40 "PEG Access" means Public Access, Educational Access, and Government Access, jointly or severally.
- 3.41 "Person" means any sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and any natural person.
- 3.42 "Programmer" means any Person who prepares, produces or provides Programming that is intended for transmission on a Cable System.
- 3.43 "Programming" means the video, audio, voice, data, multimedia or other material or programs prepared for or capable of transmission on a Cable System or, as the context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System.
- 3.44 "Public Access" means Access for the public, including organizations, groups and individuals.
- 3.45 "Puget Sound Region", or "Region" or "Regional" means the geographic area of King, Pierce, and Snohomish counties.
- 3.46 "Rebuild" means to upgrade the Cable System and in accordance with Section 9.0.
- 3.47 "Right of Way" means the surface of and the space alongside, above and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement and right-of-way now or hereafter held or administered by the City.
- 3.48 "School" means any educational institution accredited by the State of Washington, including primary and secondary schools (K-12), colleges and universities, and any "qualified non-commercial educational television station" as that term is defined in 47 USC §535.
- 3.49 "Service Interruption" means any loss of any element of programming on any part of the Cable System.
- 3.50 "Standard Installations" are those that are located up to 125 feet from the existing distribution system and include subscriber ownership of the cable from the demarcation point to the consumer's electronic interface.
- 3.51 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid, including each such person in a multiple unit building.

- 3.52 "Tier" means Programming Services offered by Grantee to Subscribers as a package.
- 3.53 "Upgrade" means an improvement in any technical aspect of a Cable System.
- 3.54 "Upstream Channel" means a Channel capable of carrying a transmission to a Headend from any other point on a Cable System including Interconnection points.

SECTION 4. FRANCHISE AREA

- 4.1 Franchise Area. Grantee shall provide Cable Services, as authorized under this Franchise, within the area of the City designated as the Central Cable Television Franchise District, and set forth as the Cable District identified on Appendix “A” (map) attached hereto.
- 4.2 Expanded Franchise Area. Grantee may apply to City to extend the provisions of this Franchise to other franchise districts within the City. Upon such application, the City shall conduct any required ascertainments and reviews. Upon City approval, the terms of this Franchise shall apply to the additional franchise district. The City may utilize other methods provided by law to award other franchises.
- 4.3 Cable System Buildout. All new construction shall be consistent with the provisions of Section 8 of this Franchise regarding technical standards. Programming standards and criteria will be consistent with the provisions of Sections 5 and 7 of this Franchise.

SECTION 5. PROGRAMMING AND CHANNEL CAPACITY

- 5.1 Grantee Compliance. Grantee shall meet or exceed the Programming and Channel capacity requirements set forth in this Franchise.
- 5.2 Maintenance of Existing Conditions.
- (A) Without the written consent of the City and except as otherwise specifically provided in this Franchise, Grantee shall not reduce or remove any of the following:
- (1) The categories of Programming and number of channels in each Tier that was provided as of January 1, 1996.
 - (2) The broad categories of Programming provided as of January 1, 1996, including:
 - (a) International programming
 - (b) Minority programming
 - (c) All local broadcast stations of the region pursuant to must carry or retransmission consent agreements.
 - (d) Two national cable programming networks
 - (e) At least one public broadcasting affiliate in the region
 - (f) Multiple movie/pay-per-view offerings
 - (g) Local and cable sports programming
 - (h) At least three National News Networks
 - (i) Music programming including 24 hour music programming
 - (j) Congressional and federal agency Programming
 - (k) Public Educational and Government Access Programming
 - (l) Family Programming
 - (m) Children's Programming
 - (n) Arts and Culture Programming
 - (o) Science and Humanities Programming
 - (p) Consumer and Financial Programming
 - (q) Programming of interest to or pertaining to women
 - (r) Country Western Programming
 - (s) Local Origination Programming
 - (t) Business Programming
 - (u) Washington State Public Interest Programming as available
 - (v) Home shopping
 - (w) Weather

- 5.3 Expanded Programming and Channel Capacity. Within forty nine months following the effective date of this franchise, Grantee shall provide:
- (A) A minimum Downstream Channel capacity of 70 analog Channels to all Subscribers.
 - (B) Closed Channels in sufficient number and technical quality to permit the implementation of the Closed Channel requirements of the Franchise.
 - (C) In addition to other specific programming requirements contained in this Franchise, at least the following categories of Programming:
 - (1) One or more Channels devoted exclusively to each of the following broad programming categories:
 - (a) Education
 - (b) News & Information
 - (c) Sports
 - (d) Cultural and performing arts
 - (e) State and local government affairs
 - (f) Weather
 - (g) Programming addressed to diverse ethnic and minority interests
 - (h) Audio programming (including a minimum of twenty local FM radio stations)
 - (i) Business News
 - (j) General entertainment (including but not limited to movies)
 - (k) National Public Programming such as C-Span
 - (l) Other local broadcast channels subject to must-carry or retransmission consent.
 - (m) Foreign Language Programming
 - (2) One or more Channels devoted substantially to each of the following:
 - (a) International News
 - (b) Children's Programming
 - (c) Family Programming

- (3) The following other broad categories of programming:
- (a) Locally produced programming relating to Northwest issues, events and affairs of interest to City and Northwest residents
 - (b) Senior Citizens Programming
 - (c) Science/documentary
 - (d) Music programming in video format

As used in this subsection, "exclusively" means to the maximum extent programming in the category in question is obtainable; "substantially" means, to the extent such material is available, the majority of the hours from nine a.m. to twelve midnight pacific time shall be devoted to the specified category.

5.4 Ascertainment Process.

- (A) At least annually, Grantee shall arrange and pay for a systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's Cable Services and of the cable-related needs and interests of the community and the preferences of Subscribers within the Grantee's Franchise Area, using a methodology approved by the City. An independent entity approved by the City shall conduct the ascertainment and furnish a written report of its findings. Within thirty days of receipt of the report of the ascertainment, Grantee shall provide the City with a timetable for specific actions taken or to be taken in response to the information developed.
- (B) At least annually following the completion of the ascertainment process, Grantee shall make such adjustments to its broad programming categories and to its other cable services as are reasonably necessary, and as are subject to reasonable contractual requirements, to accommodate the cable-related community needs and interests reflected in the ascertainment results.
- (C) Grantee shall establish and maintain an ongoing dialogue with community organizations serving the franchise area for the purpose of receiving input on programming categories and other cable related community needs and interests related to youth educational activities. Notwithstanding the foregoing, Grantee may, but shall not be required to, establish and maintain such dialogue with more than one community organization at a time.

5.5 Deletion or Reduction of Programming Categories or Channels. Grantee shall not delete or so limit as to effectively delete any broad category of Programming or any channel within its control for any group of subscribers without the City's consent, and shall provide at least ninety days' prior written notice to the City of

Grantee's request to do so, including all proposed changes in bandwidth or channel allocation, and any assignments including any new equipment requirements that may occur as a result of these changes.

- 5.6 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel any Programming which is obscene. The Grantee shall enforce a written policy prohibiting obscene programming. This section shall not apply to Internet transmissions, which are governed by Section 7.10(E).
- 5.7 Parental Control Device. Upon request by any Subscriber, Grantee shall make available free of charge a parental control or lockout device that will enable the Subscriber to block all access to any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of the original subscription and annually thereafter.
- 5.8 Broadcast Channels. Grantee shall provide to all Subscribers the signals of:
 - (A) Local commercial television stations entitled to must-carry status and qualified low power stations (unless unable to reach agreement with such a station under 47 USC §325(b)(i)); and
 - (B) Qualified local non-commercial educational television stations.

SECTION 6. PUBLIC. EDUCATIONAL AND GOVERNMENT ACCESS

6.1 Funding for Public, Educational and Government Access (PEG) Requirements.
In order to meet part of its Public Educational and Government Access obligations, as provided in this franchise, Grantee shall make available to the City a franchise fee or, in the alternative, a capital contribution in such amounts as set forth in Section 11.

6.2 Designated PEG Access Managers.

(A) The Initial Designated PEG Access Managers shall be as follows:

Public Access	A third person or persons designated by the City in its sole discretion.
Educational Access	University of Washington Seattle Community College Seattle Public Schools KCTS
Governmental Access	The City

The City may name additional and/or replace Designated PEG Access Managers. The Designated Access Managers of Educational and Governmental Access shall have responsibility for operating and managing PEG Access Facilities. In the event the Grantee is chosen by the City to be the Designated Access Manager for Public Access, and for as long as the Grantee is the Designated Access Manager for Public Access, the Grantee will be subject to the requirements of Appendix B.

(B) At its own expense Grantee shall cooperate with Designated PEG Access Managers and providers and facilitate their use of Grantee's Cable System and Programming of PEG Access channels. Grantee shall enter into such operating agreements with Designated PEG Access Managers as are appropriate to meet PEG Access requirements of this Franchise.

(C) In coordination with, and at the discretion of, the Designated Public Access Manager, Grantee shall perform the following outreach activities within its franchise area:

- (a) Make a minimum of 25 contacts annually with community groups to make them aware of Public Access Options;
- (b) Make one daily announcement on one of the Basic Service Tier channels other than PEG Channels describing the nature and availability of Public Access;

- (c) Design, print, and distribute annually to all schools, community colleges, universities, churches and community centers located in the franchise area as listed in the local U S West directory, or other publication designated by the Designated Public Access Manager, and any other locations specifically suggested by the Designated Public Access Manager a poster describing the nature and availability of Public Access.
 - (d) Mail to its Seattle subscribers each year a bill insert limited to the subject of Public Access and informing Subscribers, at a minimum, of Public Access Facility locations, operating hours, studio capabilities, training programs, and equipment and studio availability.
- (D) Costs related to the community outreach activities set forth in Section 6.2 shall be absorbed by the Grantee, and shall not be treated as external costs nor form the exclusive basis for any rate increase.

6.3 Community Outreach. Grantee shall work with youth educational organizations serving the franchise area to assist in developing training and/or education programs in areas of the telecommunications business in which Grantee has expertise. Notwithstanding the foregoing, Grantee may, but shall not be required to, work with more than one such organization at a time.

6.4 Channel Capacity.

- (A) Initial Public, Government and Educational Access Programming.
- (1) Grantee shall make available 3 PEG channels, one Public, one Educational and one Government Access, on the Effective Date of this franchise.
 - (2) A maximum of three additional PEG channels shall be made available on 60 day's notice from the City that programming is available from a PEG channel manager. Allocation of these additional channels shall be at the sole discretion of the City.

(B) Additional Public, Educational and Government Access Programming

Whenever Grantee activates additional commercial channels, Grantee shall simultaneously, at the City's request, activate additional PEG channels at the rate of one PEG channel for every three commercial channels activated, until ten PEG channels as described in Sub-section C are available. Allocation of these additional channels shall be at the sole discretion of the City.

(C) PEG channel allocation

- (1) Public Access Channels. Beginning no later than forty nine months from the effective date of this franchise, Grantee shall provide not less than two (2) 6 MHz Channels for Public Access Programming to all Subscribers, which will be interconnected with all other City franchises and at least one (1) of which may be Interconnected with adjacent systems in King, Snohomish and Pierce Counties at the discretion of the City. Additional Public Access Channels shall be provided as set forth in Section 6.7.
- (2) Educational Access Channels. Beginning no later than forty nine months from the effective date of this franchise, Grantee shall provide not less than six (6) 6 MHz channels for Educational Access programming to all Subscribers which will be Interconnected with all other City franchises and at least one of which shall be Interconnected with all adjacent systems in King, Snohomish and Pierce Counties at the City's direction. Of these Educational Access Channels, one (1) Channel may be a Closed Channel at the City's request, and one (1) Channel may be used for KCTS programming, although that channel will not constitute a trigger channel under Section 6.7(B). Additional Educational Access Channels shall be provided as set forth in Section 6.7.

(3) Governmental Access Channels. Beginning no later than forty nine months from the effective date of this franchise, Grantee shall provide no fewer than two (2) 6 MHz Channels for Governmental Access Programming to all Subscribers, at least one of which will be Interconnected with all other City franchises and may be connected with all adjacent systems in King, Snohomish, and Pierce Counties at the City's direction. Of these Governmental Access Channels, one (1) Channel may be a Closed Channel at the City's request. Additional Governmental Access Channels shall be provided as set forth in Section 6.7.

(D) Hardwire Returns Upon City request, Grantee shall provide hardwire returns at incremental cost to the PEG access origination points. With City approval, the grantee may provide, at no charge, the equivalent capacity on the cable system.

6.5 Access Channel Assignments. Grantee shall provide Channel assignments for PEG Access in accordance with the following criteria:

- (A) PEG Access Channels shall be assigned so that they are the same on all City franchises. New channel numbers shall be approved by all franchisees in writing prior to activation, subject to the process set forth in Section 6.7(C).
- (B) Public Access, Educational Access, and Governmental Access Channels shall be assigned Channels in the channel one through 70 range, except as authorized by the City.
- (C) Initially, and until otherwise approved by the City, the Channels used for PEG Access during the period preceding the Effective Date shall not be altered.
- (D) Nothing in this section shall limit Grantee, Designated Access Managers, or other cable franchisees from agreeing upon other Channel assignments consistent with the process set forth in Section 6.7(C) provided that no such changes shall be made without prior written approval by the City.

6.6 Access Interconnections.

- (A) Grantee shall continue all Interconnections of Access Channels in effect on the effective date of this Franchise, and as otherwise provided herein, unless otherwise authorized or directed by the City. The City shall designate an Access Manager with the right to control and schedule the operation of all Interconnects of Access Channels with other systems.
- (B) Grantee shall work with the City, other cable franchisees, and Designated Access Managers to establish and coordinate City-wide Interconnected PEG Access Channels.
- (C) Grantee shall take all necessary steps to ensure that signal quality comparable to that available on the subscriber network and routing systems are provided continuously for all Access Interconnections throughout the duration of this Franchise.
- (D) New access channels provided under Section 6.7 below shall be interconnected to the same extent as provided in this Section and in Section 6.7(B).

6.7 Expansion of Access Channels.

- (A) Additional Access Channels. In addition to the Access Channel capacities outlined in Section 6.4, the Grantee shall provide, at the City's request, additional Public, Educational and Government Access Channels when usage of any type of Access Channel reaches the level specified in Section 6.7(B). Such requests shall be made in writing simultaneously to all franchisees in the franchise area. The City may request up to three (3) additional Public Access Channels, six (6) additional Educational Access Channels and six (6) additional Government Access Channels; provided, no such additional channel shall be required unless it may lawfully be provided on a compressed digital basis outside the Basic tier and provided further that the City will waive the one additional government access channel if the Grantee has a channel devoted to carriage of TVW (Washington State government programming). The Grantee shall provide any additional standard video channels required by this subsection within three (3) months of receiving a written request from the City for such channels. No additional channel provided pursuant to this subsection shall supplant existing Programming within any of the categories set forth in Section 5 except to the extent authorized by the City.
- (B) Triggers for Added Channels. The City may require the Grantee to provide additional activated Channel capacity for the following types of PEG Access when the following conditions are met:

- (1) Public Access Channels: During 16 consecutive weeks, the Public Access Channels are in use for programming 80% of the time exclusive of re-runs, Monday through Friday, during the hours 11:00 a.m. to 11:00 p.m.
 - (2) Educational Access Channels: During 16 consecutive weeks, the Educational Access Channels are in use for Programming 70% of the time, five days per week, Monday through Friday, during the hours 9:00 a.m. to 3:00 p.m. Re-runs shown solely for the purpose of meeting the trigger requirements shall not count.
 - (3) Government Access Channels: During 16 consecutive weeks, the Government Access Channels are in use for Programming (a) 80% of the time, Monday through Friday, during the hours 6:00 p.m. to 11:00 p.m., or (b) 70% of the time Monday through Friday, during the hours 9:00 a.m. to 12 noon, or 1:30 p.m. to 4:00 p.m. Re-runs shown solely for the purpose of meeting the trigger requirements shall not count.
- (C) Assignments for Additional Access Channels. Grantee shall cooperate with the City, Designated PEG Access managers, and other cable franchisees to establish common, logically-related additional PEG Access Channel assignments. Channel assignments of any additional Access Channels interconnected with other City franchisees shall be identical among interconnected franchises and, to the extent feasible, shall match assignments in other regional franchises. If the parties are unable to agree to PEG Access Channel assignments within 90 days after the City has made a request pursuant to Section 6.7(B) for additional activated PEG Access Channel(s), the matter shall be submitted to arbitration under Section 21.2. To the extent an issue to be arbitrated requires the participation of other franchisees, the arbitration requirement will be contingent upon including parallel arbitration requirements in those agreements.
- (D) Interconnectivity. Additional access channels supplied by Grantee under this Section shall be interconnected to the same degree of interconnectivity provided for other access channels under this Franchise.
- 6.8 Access Channels on Basic Tier. All Access Channels under this Franchise shall be included on the Basic Tier of Cable Service offered by Grantee on its Cable System, except as specifically directed by the City in writing.
- 6.9 Change in Technology.
- (A) Technical Currency. Grantee shall at its own expense take necessary technical steps and provide necessary technical assistance, including the

acquisition of all necessary equipment, to insure that the quality of service of the PEG channels on the cable system remain equivalent to commercial channels and services.

- (B) Interactive Technology. In the event that Grantee's Cable System becomes Interactive, Grantee shall make one governmental and one educational channel interactive to a similar level of interactivity at the City's request. Grantee's Cable System shall be deemed Interactive when 30% of Grantee's subscribers in the Franchise Area subscribe to any Interactive service commercially available over Grantee's Cable System.
- (B) Digitization of Analog Channels. If during the period covered by this franchise, the Grantee converts any portion of its cable system to digital or compressed digital transmission, the City shall nevertheless retain exclusive control of 6 MHz bandwidth for each initial Access Channel provided to the City as specified in Section 6.4. The City may require the Grantee at its expense to digitally compress all or any portion of the PEG Access channels at or after the time that Grantee converts a substantial portion of its Cable system's current analog bandwidth to digital transmission. In the event Grantee reasonably determines that any such conversion the City may request is not economically or technically feasible, the Grantee may invoke the procedure of Section 21.2 in lieu of immediate compliance, in which event the burden shall be on the Grantee to demonstrate that such conversion is not technically or economically feasible.

- 6.10 Technical Quality. Grantee shall maintain all Upstream and Downstream and Closed Access Channels and Interconnections of Access Channels at the level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations or at the same level of quality as subscriber channels, whichever is higher.

SECTION 7. GENERAL CABLE SYSTEM REQUIREMENTS

7.1 Technically Current System:

The Cable System shall be a "Technically Current" system, defined to include the facilities and equipment that will deliver the levels of service described below. The Cable System must keep pace of developments in the industry over the franchise term. The Cable System shall be modular to facilitate expansion of coverage and services, and be upgradeable without significant impairment to working services or rebuilding of the cable infrastructure.

7.2 Interconnection:

- (A) Interconnection of Cable Systems. The Cable System shall support interconnection with all other Cable Systems in the City and King, Snohomish and Pierce Counties via the headends, and shall allow PEG programming to be broadcast simultaneously over all PEG channels in the entire region. Interconnection between headends shall have path diversity and electronic configuration such that a single path or electronic failure will not impair the interconnected service. The bandwidth to be furnished between each headend interconnection shall accommodate all PEG channels at all times during the Franchise term. City will lead and Grantee shall participate in negotiations to interconnect Grantee's system to the systems of other operators within the City. Such interconnection shall be paid for by all cable operators within the City on a Pro Rata basis, with Grantee paying only Grantee's Pro Rata Share (as defined in Section 2.8). The Grantee will utilize an industry accepted standard of protocol.
- (B) Public Building Drops. At its own expense, Grantee shall provide a single cable drop, including basic and expanded basic, to all City buildings and schools that are within Grantee's franchise area if requested by the building owner.

7.3 Cable Plant Topography

- (A) Beginning at a date no more than forty nine months after the effective date of this franchise, at a minimum, the Cable System shall use a fiber-to-the-node architecture serving subscribers via coaxial or fiber cable connections between the node and the subscribers. At each node, there must be sufficient space for the following equipment to be available for institutional and cable usage: forward fiber receivers; return fiber receivers; return fiber transmitters, and status monitor equipment and return multiplex translators.

- (B) Beginning at a date no more than forty nine months after the effective date of this franchise, the Cable System shall be designed and deployed to enable operation within the manufacturer's recommended specifications of active components that have a rating of no less than 750 MHz without requiring changes to active component spacing. Upon activation, the Cable System may operate at less than 750 MHz as long as the channel capacity requirements and network modernization requirements of the Franchise are satisfied.
- (C) Passive components deployed in the Cable System shall have a rating of no less than 1 GHz.
- (D) A maximum of eight (8) active components shall be allowed between the subscriber and headend. On average, there shall be not more than five (5) active components in a cascade from the headend to the most distant subscriber.
- (E) No taps shall be placed between trunk amplifiers.
- (F) The Grantee will rebuild its cable system utilizing "Fiber to Service Area Star" topography or configuration. Fiber optic cable will be installed from the headend out into neighborhood areas, serving approximately 1,200 homes "nodes" or pockets with enough dedicated fiber to reduce the node size to 600 as usage increases. At the node, coaxial cable will be installed on poles or in the ground to service customers.

7.4 Headend:

- (A) Headend Configuration. The headend site shall house the receiving, ad insertion, and switching equipment for the system. The Grantee's headend will be housed with sufficient air conditioning and power conditioning equipment both for short-term and long-term equipment installation. The site shall have UPS power for four (4) minutes, shall provide for generator backup to commence within that time without power interruption, and shall provide sufficient standby generator capacity to power the headend equipment indefinitely. The Grantee shall provide all power, cable racks, and other equipment and facilities needed for the proper operation of the Cable System. All equipment must be braced to meet the standards for Seismic Zone IV, as specified in the Seattle Building Code.
- (B) Space. The headend shall have adequate ventilation, air conditioning and space so that the components can operate properly and equipment can be easily maintained.

7.5 Technical Upgrade

- (A) The City may require Grantee to add or incorporate a technical upgrade of the Cable System any time after year five of this Franchise Agreement.
- (B) The test to determine whether the City may require an upgrade is whether at least 30% of the cable systems in ten market areas, to be mutually agreed upon by Grantee and the City, have been upgraded to the extent contemplated by the City.
- (C) The City may require an upgrade that does not meet the test set forth in 7.5(B) above, if it establishes, in an arbitration proceeding provided under Section 22.2, that (1) there is a material disparity between the level of service and capacity of Grantee's Cable System and that of other comparable systems; and (2) there is an actual need for the upgrade in the sense of "community need and interest," i.e., there is a demonstrable public interest to be served by the upgrade that Grantee, as a tenant in the public right-of-way, might reasonably be expected to provide. The City shall take into account such costs, potential revenues the upgrade may provide, and other competitive franchises in any requirement for an upgrade.
- (D) If the City requires Grantee to undertake a technical upgrade, then Grantee, at its option, may extend this Franchise Agreement for a period of seven (7) years from the date that the City requires Grantee to begin construction of the upgrade.
- (E) If the City requires a technical upgrade under this Section, the appropriate costs thereof may be deemed external costs, if applicable, for rate regulation purposes at Summit's option.

7.6 System Reliability and Performance:

- (A) The Grantee's system will meet or exceed FCC technical standards, as amended from time to time. Should these standards prove stricter than the standards set forth in Section 7.6(G) below, the stricter standards shall apply. The Grantee's cable system will be backed up with an average of 4 hours standby power at each node and at such cable plant that is contiguous to such node. The cable system powering will be monitored, and crews will be dispatched in the event of loss of commercial power. In the event that the system cables or fiber optic lines are severed, the Grantee will respond within an average of 2 hours and will correct all such outages, within its control, within 24 hours.
- (B) Each node, excluding the headend, shall have a minimum of four (4) hours of power supply and approved electrical receptacles for portable electrical power generator connection in the event of power outages longer than four (4) hours.
- (C) Under normal operating conditions, the system shall provide a level of performance that meets or exceeds all applicable industry standards, including without limitation FCC Regulations, and standards of the Electronics Industries Associations, Cable Television laboratories, Inc., and National Cable Television Association.
- (D) The system shall permit the operator to respond quickly and effectively to outages, requests for service, and customer complaints. The system shall include network management systems for providing continuous performance monitoring of service affecting devices and facilities, and remote equipment alarm status information that includes electrical power supply equipment, storage batteries and charging systems, and enclosure/building (open) door alarms transmission equipment. Equipment/system alarm conditions (major/minor) shall be set according to a plan submitted to the City.
- (E) The Cable System shall be capable of operating in an outdoor temperature range of -20 degrees F to +120 degrees F and with a variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes.
- (F) The Cable System shall meet specification standards when the outdoor temperature is between 0 degrees F to 100 degrees f, and supply voltages vary from 105 to 130 volts.
- (G) The Cable System shall also meet the FCC's specific technical requirements as listed below:

<u>PERFORMANCE PARAMETER DIRECTION</u>	<u>FORWARD DIRECTION</u>	<u>REVERSE</u>
1. Peak-to-Valley Response	4 dB max	4 dB max
2. Peak-to-valley, any 6 MHz video channel	+ or -2 dB max	+ or -2 dBmax
3. Video Carrier-to-noise	43 dB min	55 dB min
4. Cross modulation	-51 dB min	N/A
5. Carrier-to-hum ratio	3% max	3% max
6. Visual Signal Level to Coherent Disturbances;	-51 dB min	-63 dB min Non-HRC system
7. Chrominance-luminance delay distortion	170 ns	N/A
8. Carrier-to-echo ratio	N/A	N/A
9. Differential gain	$\pm 20 \%$	N/A
10. Differential phase	$\pm 10^\circ$	N/A
11. Subscriber signal level at Demarcation Point	+ 3dB min + 14 dBmV max	N/A
12. Level differential between adjacent channels	3 dB max	3 dB max
13. FM levels	-10 to -17 dB max below visual	N/A
14. Isolation between subscribers	18 dB min	N/A
15. 24 hour/long term level variation	8 dB max	8 dB max
16. FCC Aural-to-visual level	10 to 17 dB RF (range)or 6.5 to 17dB baseband (range)	10 to 17 dB
7.7	<u>RF leakage.</u> RF leakage for the Cable System shall not exceed the Cumulative Leakage Index specified by FCC standards.	
7.8	<u>System Capacity and Features</u>	
(A)	At the headend, equipment and facilities shall provide interconnection of the subscriber network and the PEG channels.	
(B)	The system shall allow subscribers to receive signals in substantially the same form in which they were received by the Grantee (e.g., color television signals should be received by subscribers in color, stereo signals should be received by subscribers in stereo).	
(C)	The system shall support transmission of programming designed for use/viewing by the hearing-impaired, including retransmission of closed-captioned programming.	

- (D) The cable system shall support broadcast of FM audio programming in the form in which it is received by the Grantee (stereo signals should be received by subscribers in stereo, etc.). The frequency band used by FM stations must meet the highest standard available for FM radio. Grantee's selection of frequency band for delivery of broadcast FM stations must be approved by the City, if other than 88-108 MHz.
- (E) The Grantee shall implement a system for providing restricted audio override and video interruption of all audio and video Channels during emergencies, with override to be placed under the City's control. The emergency alert system shall be built and maintained to comply with FCC Rules Requirements in effect or as they are amended. The emergency alert system shall provide for activation for the Mayor's Office and/or the City's emergency operations (911) center, with coded access for both audio and video messages. Upon request by the City, the Grantee shall cooperate with the City to test the emergency override system, for periods not to exceed one (1) minute in duration and not more often than once every six (6) months. Notwithstanding, Grantee shall comply with FCC EAS rules as finalized, which rules shall take precedence if in conflict with this section.
- (F) The system shall be compatible with any standards (e.g., HDTV, digital audio services, compression video services, addressable video services) applicable to a cable network. Compatibility shall be achieved as such standards are adopted by any cable industry body that sets such standards.

7.9 Subscriber Equipment Interface and Control

- (A) The Grantee will comply with the FCC's standard on equipment compatibility.
- (B) Tiered services may be isolated with the use of a combination of frequency selective channel deletion filters (negative traps) corresponding to channels in the tier. Pay television isolation will be accomplished with a combination of addressable converters, jamming carrier filters (positive traps) and video pre-emphasis decoding filters. Addressable converters will be made available for a fee to customers subscribing to pay services requiring the device to receive these channels. A non-addressable converter will be made available for a fee to customers who do not own cable ready television sets and require the device to receive channels that cannot be received on many older television sets. These converters will also be available for a fee to those subscribers who choose to utilize its built-in remote control features.

- (C) The system shall permit customers to receive services in a manner that interferes to the minimum extent feasible with the use of other consumer-owned electronic devices, including VCRs and remote controls.
- (D) The Cable System shall include all equipment necessary to enable consumers with NTSC "cable-ready TV receivers" to receive all programming service tiers other than premium and pay-per-view services without the need for a set-top converter except as necessary to eliminate electronic ingress such as from local broadcast stations for the term of the Franchise. For subscribers without cable-ready TV sets or who otherwise need converters Grantee shall make available for a fee converters with bypass circuitry or similar equipment that enables subscribers to watch one (1) program while taping another.
- (E) The Cable System shall enable subscribers with NTSC analog TV's to receive all basic subscriber cable television services without degradation in the event new technology is introduced.

7.10 Internet Access Service

- (A) As soon as it is physically practicable after completion of the technical upgrade provided for in Section 7.3, Grantee shall offer commercial Internet access to residential, governmental and educational subscribers. Grantee will be relieved of this obligation only upon its demonstrating that the service is not commercially feasible. There will be a rebuttable presumption that such access is commercially feasible if a comparable service is available within the city.
- (B) In the event Grantee demonstrates that the service provided for in the previous section is not commercially feasible, Grantee shall offer the service within a reasonable time after the service does become commercially feasible.

- (C) Grantee may, at its option, offer Internet access service as a premium service. Grantee will provide and own the transmission path, such as cable, head-end routers, modulators, and demodulators, and will make available (for purchaser or lease) any subscriber connection equipment (such as modems) required for the system to be fully functional, but shall not prohibit subscribers from using their own compatible equipment.
- (D) The service shall enable subscribers to obtain transmission rates of at least 1.5 mbps in the downstream direction and no less than 96 kbps in the upstream direction. The transmission medium may be shared, but the customer service standard contention rate in each segment up to the Internet backbone shall not exceed three per cent (3%) in any segment during any 15 minute period for more than three (3) consecutive days.
- (E) The Internet access service shall make it practical for subscribers to gain access to the full range of Internet servers and functions, to act as providers of information subject to normal charges, and to have unrestricted access to the content and sources of information of the Internet (except to the extent the company would incur liability for transmitted materials). Grantee acknowledges that a main purpose of the City in entering into this aspect of the agreement is to facilitate broad access, which necessitates broad compatibility with subscribers' connection equipment and applicable standards. Grantee will incorporate provisions for such compatibility in its design and implementation of the service.

- (F) Precise service speeds, precise descriptions of services and exact specification of system configuration will change and develop with the technology available at the time of commercial introduction. If at the time of commercial introduction it is technologically and economically feasible to provide faster transmission rates than otherwise provided for herein, or to better serve subscriber needs through optional rates, services or configurations, Grantee shall consult with the city and shall consider the City's views regarding such alternatives and regarding the needs of the various subscriber groups, including government and educational users in its design and implementation of the system, but Grantee shall not be obligated by reason of this requirement to adopt any particular technology, rate, service or configuration.
- (G) Upon commercial introduction of the service Grantee shall have no responsibility for the security, content and copyright of information transmitted in either direction.
- (H) The City will be entitled to require Grantee to implement two (2) technical upgrades of the Internet access at any time after three (3) years have elapsed following the start of commercial Internet access and upon satisfaction of the following condition among the ten (10) comparable markets identified in Section 7.5, three have upgraded their Internet access capacity to a material degree beyond that provided by Grantee under this agreement at that time.

Upon implementation of any required upgrade, the franchise will be extended for a period of five (5) years from the date the City requires implementation of the formal upgrade request.

- (I) There shall be no requirement that grantee construct or operate a separate institutional network (I-NET). Grantee acknowledges that the provision of the Internet access service is a critical means to connect public, government and educational institutions and to provide institutional network services in a cost effective manner. Grantee will allow the City to connect, and co-locate if necessary, equipment to provide a direct high speed connection from the Grantee's head-end to the city network for governmental purposes. The Grantee will negotiate a similar arrangement with the University of Washington for educational purposes.

SECTION 8. UPGRADE & EXTENSION PROJECT SPECIFICATIONS

- 8.1 Introduction. This section specifies conditions and requirements for the Grantee to rebuild the Cable System and to transition from that cable network to an upgraded network. All requirements provided herein are in addition to any other applicable standards, codes or requirements.
- 8.2 Cable System Rebuild Timeframe. The Grantee will complete its rebuild of the cable system in the City of Seattle, within 49 months from the effective date of the franchise, excluding delays reasonably beyond Grantee's control.
- 8.3 Cable System Schedule and Progress Reports. Once construction begins, the Grantee shall prepare and provide the City with annual updates showing actual progress, and shall provide the City with an annual narrative report clearly stating the progress of the construction and any changes in critical path or project completion dates. The City reserves the right to request reports and narratives on a more frequent basis than set forth in this Section, if the public interest so requires.
- 8.4 Service Installation:
- (A) Standard Installation of an Unwired Dwelling Unit. Standard Installation of an Unwired Dwelling Unit means installation of the Cable System from the Subscriber's property line to the Subscriber's Dwelling Unit, where such distance is not more than 125 feet, plus additional inside wire and at least one outlet sufficient to receive Cable Services.
 - (B) Standard Installation of a Prewired Dwelling Unit. Standard Installation of a Prewired Dwelling Unit means installation of the Cable System from the Subscriber's property line to the Demarcation Point located on the Subscriber's property, where such distance is not more than 125 feet, sufficient to receive Cable Services and where the pre-wired equipment will allow the cable system to meet all FCC technical requirements.
 - (C) Nonstandard Installation. Nonstandard Installation means any installation of the Cable System that requires the installation of facilities from a point more than 125 feet from the Subscriber's property line to (1) in the case of a prewired Dwelling Unit, the demarcation point; or (2) in the case of an unwired Dwelling Unit, a point not less than 12 inches from the exterior wall of the Subscriber's dwelling unit; or (3) any underground installation in an area where plant facilities are not underground; or (4) any installation calling for more than three outlets in a dwelling unit.

- (D) Rates and Charges. Charges for a Standard Installation of an Unwired Dwelling Unit or a Standard Installation of a Prewired Dwelling Unit may not exceed the Grantee's published rates. Nonstandard Installation charges shall not exceed the Grantee's published Hourly Service Charge for nonstandard transactions, and may be applied only to that portion of the installation defined as a Non-Standard Installation in Part (C) above.
- (E) Construction Outside Subscriber's Property Line. In no event will a Subscriber be charged Standard or Non-Standard Installation Charges for any portion of Grantee's Cable System constructed or installed outside of the Subscriber's property line.

- 8.5 Construction Plan and Practices Submittals and Approvals. Prior to the construction of any portion of the cable system, the Grantee shall submit to the City a detailed distribution system design and construction plan for that portion of construction. The system design shall be on maps of industry standard scale, shall include a legend describing the meaning of any symbols used, and shall depict all electronic and physical features of the design. The submission may be made at the same time as any other required filings for City approval.

The information submitted shall clearly demonstrate that the system will satisfy all the requirements specified in Section 7 and applicable law, and that the system will not result in service to areas of the City on a discriminatory basis. See, Section 10.4.

Approval by the City of Grantee's design and plan shall not alter Grantee's responsibility to fully meet all terms and conditions of the Franchise, and no deviations from such requirements shall be deemed approved even if the deviation is depicted on the approved plan unless the Grantee has expressly advised the City that a deviation is present and obtained the City's express written approval of the change.

The Grantee shall separately submit to the City a copy of its technical policies and procedures to the City prior to initial construction and as amended.

- 8.6 Compliance with Construction and Safety Standards. The Grantee shall be responsible for the work performed by its employees, agents, independent contractors and any subcontractors, suppliers or materialmen with respect to any work performed under or in connection with the Franchise and for compliance with all applicable laws. Grantee will construct its system using applicable City codes and the following safety codes and construction standards in its construction practices:

NEC - NATIONAL ELECTRICAL CODE

NESC - NATIONAL ELECTRICAL SAFETY CODE

OSHA - OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

WISHA - WASHINGTON INDUSTRIAL SAFETY AND HEALTH

All contractors or subcontractors shall be properly licensed. Grantee shall require that each contractor, subcontractor, supplier and materialman be bound to Grantee with respect to any part of any work performed by them in connection with this Franchise to the same extent and in the same way as Grantee is bound to the City.

- 8.7 Workmanship. Grantee's employees, contractors, subcontractors, suppliers, materialmen and others performing work in connection with this Franchise must be qualified with appropriate and applicable certification to perform all tasks they are required to perform.
- 8.8 Quality of Service During Buildout. During the cable system buildout, the subscriber shall not suffer outage attributable to the construction, except as specified in 8.12.
- 8.9 Construction and Work Permits, Licenses and Permission. The Grantee is responsible for obtaining all construction, pole attachment and work permits and/or licenses, insurance or bonding required by City, county, state, or federal laws prior to commencing with any applicable work activity. If the work requires entering private premises, prior permission from the premise owners must be obtained by the Grantee.
- 8.10 Construction Area Safety and Cleanup. During Cable System construction or maintenance periods, property (either public or private) affected by the work activity must be restored to a safe and clean/unlittered condition at the end of each work day, or when the area will be unattended for an extended period of time. When construction or maintenance work in an area is completed, the area shall be cleared of all material resulting from the work activity and restored to the original condition prior to the construction. Grantee agrees to inspect its contractor(s) on a regular basis and ensure that both its personnel and contractor(s) provide clean-up of all workplaces and adhere to industry safety as well as, all State and local safety standards.

8.11 Component and System Tests, Records and Test Points. The Grantee shall perform all tests necessary to demonstrate compliance with the performance standards specified in this Agreement. The tests shall be conducted in accordance with federal rules and in accordance with the most recent industry accepted practices. The City reserves the right to approve the practices to be used. Grantee shall initially test all active components before installation into the system. Initial proof-of-performance will meet or exceed the minimum requirement set forth in FCC Rules & Regulations Part 76, Subpart K "Technical Standards." The Grantee will retain records of all tests performed and make such records accessible to the City.

(A) Pre-Construction. Tests shall be performed on a significant sample (25%) of all passive components to verify compliance with manufacturer's specifications. All cable (fiber, coax, trunk, and coax distribution) shall be tested to verify compliance with the manufacturer's specifications. All trunk and distribution amplifiers shall be bench tested to verify compliance with manufacturer's specifications. Pre-construction test records shall be maintained by the Grantee and be available for City inspection and copy.

(B) Post-Construction. Acceptance tests shall be performed on each completed section of the Cable System prior to transferring service. The tests must demonstrate that the system components are operating as required.

As-built drawings shall be provided by the Grantee to the City within 30 days of completion of construction for an area served by a fiber node. The drawings shall contain all information shown on the design and construction plan approved by the City and shall clearly indicate any departures from that plan. The as built drawings shall be kept current by the Grantee and revised within 30 days of any modification of the system. The City shall have free access to the as-built drawings at all times.

(C) Test Access Points. Permanent test access points shall be established at locations geographically dispersed in the cable system which will be jointly selected by the City and the Grantee. The type and number of test points will be based on FCC rules and regulations and other appropriate bodies (e.g., Cable Laboratories, Inc., etc.)

(D) Designation. Each test access point shall be assigned a unique designation by the Grantee. At a minimum, the designation shall include the address or location code for locating the test point.

(E) Records. Records shall be maintained of test results for each test and provided to the City within 30 days of test completion.

- 8.12 Service Cutover Process. Any cutover of service from the current cable system to the rebuilt system shall be effected in a manner that limits any service impairment or disruption to those subscribers whose service is being transferred. The interruption for any subscriber shall not be more than one hour and shall occur only between 2:00 a.m. and 7:00 a.m.
- 8.13 Service Connections. In the provision of the cable service, all equipment and facilities to the Demarcation Point shall be owned by the Grantee.

SECTION 9. TECHNICAL OPERATION AND MAINTENANCE STANDARDS AND REQUIREMENTS

9.1 Technical and Safety Standards:

- (A) Grantee will maintain its system in accordance with applicable City codes and the following safety codes and construction standards: NEC - National Electrical Code; NESC - National Electrical Safety Code; OSHA - Occupational Safety and Health Administration; WISHA - Washington Industrial Safety and Health; and Rules and Regulations, Part 76, Subpart K (Technical Standards), now in effect or as they may be amended.
- (B) Grantee shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its activities under this Franchise and shall take all reasonable safety precautions. Grantee shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents.
- (C) Grantee shall install and maintain its Cable System in accordance with the requirements of the National Electrical Safety Code, and in such manner that Grantee's Cable System shall not interfere with any installation of the City or any public utility or telecommunications utility, or any Grantee, licensee or permittee of the City.
- (D) Grantee shall provide and put in use such equipment and appliances as shall control all electric currents on a closed circuit basis and carry such currents, Grantee television and other system signal impulses in a manner so as to prevent injury to any wires, pipes, structures, or any other property .

9.2 Network Monitoring and Repair:

- (A) The subscriber network shall be monitored 24 hours per day, seven days per week. Customers shall have access by telephone to Grantee to report outages or service degradation. With the exception of disaster or emergency situations beyond the control of the Grantee, a response to all service problems shall be made according to the following schedule:
 - (1) For system outages known to affect 100 subscribers or more, a repair technician shall be dispatched within 15 minutes from the notification of the trouble, either as a result of a customer contact or network monitoring activity.
 - (2) For system outages resulting in any other service interruption to more than 3 households, a repair technician shall respond within two (2) hours of notification of the outage.

- (B) With respect to requests for service not falling within the previous subsection, including service problems arising beyond the demarcation point, Grantee shall dispatch a repair technician within twenty-four (24) hours of a request for service.
- (C) Grantee shall maintain records of all individual trouble calls including the date of the call, and information regarding the response to that call, including the date that a technician was dispatched, the diagnosis of the trouble and how it was resolved.
- (D) Grantee shall maintain records of all system outages, date of the outage and the duration of the outage.

9.3 Routine Maintenance and Performance Testing:

- (A) Grantee shall perform routine maintenance over the entire system. At minimum, the following tests must be conducted.
 - (1) All tests required by the FCC shall be performed in accordance with those requirements (semi-annual).
 - (2) All tests point described in Section 8.11 (C) shall be tested annually or at special request of the City for all subscriber services back to the headend for conformance with the technical specifications listed in Section 7 of the Franchise.
 - (3) All interconnections to other networks, including satellite links and microwave links, shall be tested monthly for conformance to the design specifications.
- (B) Quarterly testing shall be conducted for emergency broadcast capabilities, battery backup power, and leakage.
- (C) Monthly tests shall be conducted for emergency backup power at the headend.
- (D) Thirty (30) days prior to scheduled testing, the City shall be notified of the test schedule. A representative of the City may witness any or all testing.
- (E) Grantee shall maintain written records of all tests specified in this section (or any part thereof), performed either by or for the Grantee. Such test results shall be available for inspection by the City upon request.

9.4 Spare Parts: Grantee shall maintain all spare parts needed to enable Grantee to make repairs promptly and without securing parts from outside the City. The

Grantee shall have immediately available a sufficient supply of spare parts to effect repairs in accordance with the requirements of this Franchise.

SECTION 10. SUBSCRIBER RELATIONS AND SERVICE STANDARDS
COMPLAINT PROCEDURE

10.1 Office Hours and Telephone Availability.

- (A) The Grantee shall maintain a local or toll-free call telephone subscriber service access line which will be available to its subscribers 24 hours a day, seven days a week.
- (B) Trained company representatives shall be available to respond to subscriber telephone inquiries during Normal Business Hours.
- (C) After Normal Business Hours, the subscriber service access line may be answered by an answering service, automated response system or an answering machine. A qualified Grantee representative shall respond on the next business day to inquiries received after Normal Business Hours.
- (D) Under Normal Operating Conditions, telephone answer time by a subscriber representative, including wait time, shall not exceed 30 seconds after the connection is made. If the call must be transferred, transfer time shall not exceed 30 seconds. These standards shall be met not less than 90 percent of the time under normal operating conditions, as measured on a quarterly basis.
- (E) Under Normal Operating Conditions, the subscriber shall receive a busy signal less than three percent of the time.
- (F) Grantee shall periodically maintain a log, or records in a format approved by the City, of all subscriber complaints by date that is available for City inspection. The log will include subject of call, how it was resolved, when it was resolved, any additional action taken by caller or Grantee, and shall be maintained in a way that allows for sorting, deletion of fields, and manipulation of data per City request. The log shall be maintained a minimum of 12 weeks per year with the dates to be selected by the City on one week's notice to Grantee. The number of days during which the log shall be maintained may be increased, and the information required to be gathered may be altered, to the extent the City reasonably determines there is evidence of a service problem from the log information or otherwise.

- (G) Grantee shall establish at least two (2) Subscriber Service Centers, one within 1 mile of the Franchise Area. The Subscriber Service Centers shall be facilities for pick up and return of equipment and payment of bills. The Subscriber Service Centers shall be and all other bill payment locations shall be open at least during Normal Business Hours and shall be conveniently located at safe, visible sites within the Grantee's Franchise Area. The Subscriber Service Centers shall be handicapped accessible and located along mass transit routes.

10.2 Installations and Subscriber Service Calls. Under Normal Operating Conditions, each of the following four standards shall be met not less than ninety-five (95) percent of the time measured on a quarterly basis.

- (A) Standard Installations for Dwelling Units shall be performed within seven business days after an order has been placed, unless otherwise requested by Subscriber.
- (B) The Grantee shall provide "appointment window" alternatives for installations, service calls, and other activities which shall include the option of a four-hour block during Normal Business hours. The Grantee may schedule service calls and other installation activities outside normal business hours at the request of and for the convenience of the Subscriber.
- (C) The Grantee may not cancel an appointment with a Subscriber after the close of business the day before the appointment unless Grantee is prevented from making the appointment by any condition outside of Grantee's control. In the event that cancellation occurs, the appointment must be rescheduled in accordance with Section 10.2(D).
- (D) If a representative of the Grantee will not be able to keep an appointment, the Grantee shall reschedule the appointment at a time convenient for the Subscriber.
- (E) If the cable signal on any cable channel is below FCC technical standards for more than two weeks, Grantee shall provide a proportionate rebate to affected Subscribers for the entire period that the Cable channel is below FCC technical standards. The Grantee shall provide Subscribers with an automatic credit of one day's cable service for each outage within Grantee's control lasting more than four hours in any 24-hour period. Subscribers known to be affected shall not be required to request credit. Grantee shall provide City with documentation to prove compliance with the requirements of this subsection.

- (F) If a Subscriber requests disconnection of any or all services, billing for affected services shall end on the date requested by the subscriber. The Subscriber shall not be responsible for Cable Services delivered after the request. The Grantee must refund any deposits paid by the Subscriber, less any owed or disputed amounts, by the end of the next billing cycle subsequent to disconnection. Grantee may charge for a service call only if the condition is caused by the Subscriber. Normal system maintenance shall not be included in individual service call charges.
- (G) The Grantee shall provide Subscribers with 24 hours' advance notice of planned service interruptions, if other than as outlined in Section 8.12. Interruptions shall occur only during periods of minimal use of system and shall not occur except for good cause.

10.3 Communications Between Grantee and Subscribers.

- (A) Identification. Subscriber service representatives shall appropriately identify themselves. Field representatives shall provide Summit picture identification and, upon request, means of verification.
- (B) Notifications to Subscribers.
 - (1) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all paying Subscriber's Dwelling Units, and at any time upon request:
 - (a) products and services offered;
 - (b) prices and options for programming services, conditions of subscription to Programming and other services and policies concerning changes in services offered, notification of changes, disconnection and service downgrades;
 - (c) installation and service maintenance policies, including the Subscribers' responsibilities for equipment;
 - (d) instructions on the use of Cable Services;
 - (e) channel positions of Programming;
 - (f) billing and complaint procedures, including the address and telephone number of Grantee's cable office, Grantee's policies on deposits, returned check charges; and the address and telephone number of the cable office of the City of Seattle.

- (g) policies concerning protection of Subscribers' privacy.
- (2) Subscribers shall be notified of any changes in Programming, services or channel positions as soon as possible in writing and when it becomes practicable through announcements on the Cable System. Subscribers shall be given a description of the changes, their options (including costs) for changing services they receive, phone number for questions and effective date. Notice must be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 60 days in advance of any significant changes in the other information required by the preceding subsection.
- (3) Affected Subscribers shall have 60 days after a Grantee's change in services or rates to downgrade their service without charge.
- (4) Grantee shall include a notice describing the services of the Office of Cable Communications with Subscriber bills annually, and shall post a notice; with this information in Grantee's offices.
- (5) All promotional materials advertising Cable Services shall accurately disclose price terms. Grantee's subscriber service representatives shall make the price of pay-per-view and pay-per-event programming clear before an order is taken unless the order is placed automatically. Grantee shall distribute collateral/promotional material in multi-unit buildings only with the approval of the building owner. Grantee shall not condition the provision of Cable Services on the receipt of such approval.
- (6) Grantee shall not charge Subscribers for any services they have not affirmatively requested.

(C) Billing.

- (1) Bills shall be clear, concise and understandable. Bills may be fully itemized to the extent allowed by law and this Franchise, provided that all bills shall clearly reflect only a single total amount due. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Franchise fees, costs and taxes shall be itemized in a manner that accurately and fairly portrays the basis for the taxes and fees.
- (2) Grantee shall maintain records of customer billing disputes and their resolutions. Subscriber shall receive a response within 15

days of receipt of complaint. The first response to a specific dispute may be oral if it is provided within 5 days of receipt of the complaint. Subsequent responses to the same issue shall be written, as shall responses that a subscriber specifically requests be put in writing.

- (3) Bills shall not be due sooner than 20 days after the date of mailing. The closing date of the billing cycle shall be shown on the bill.
- (D) Refunds. Refund checks shall be issued promptly, but, in any event, no later than either:
 - (1) The Subscriber's next billing cycle following resolution of the request or 30 days, whichever is earlier; or
 - (2) 10 days after the end of the billing cycle subsequent to service being disconnected-and equipment returned.
- (E) Credits. Credits for service shall be issued no later than the Subscriber's next billing cycle or thirty days after the determination that a credit is warranted, whichever is sooner.
- (F) Delinquent Account Disconnection. Grantee shall send disconnect notices. The disconnect notice shall include the disconnect date, the amount that must be paid to avoid disconnection, the total amount due, and a phone number. If the Subscriber does not respond, Grantee may disconnect the Subscriber ten days after the disconnect notice is sent.
- (G) Deposits. Deposits shall accrue interest at a market rate of one-year deposits. Grantee shall report principal and interest earned annually to each Subscriber. Within ten (10) days after termination of service, Grantee shall repay any deposit with accrued interest to the subscriber, less any sums owed to Grantee.

10.4 Subscriber Rights.

- (A) Discrimination Prohibited. Grantee shall comply at all times with all applicable laws, rules, and regulations including the terms of the Franchise relating to non-discrimination.

- (1) All Grantee rates and charges shall be published and non-discriminatory. Except as provided hereunder, Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of type of Dwelling Unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within the Grantee's Franchise Area. Nothing in this section shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns, or discounted rates for provision of Cable Services to multiple unit buildings
- (2) Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Programmers or any other Persons on the basis of type of Dwelling Unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap or geographic location within the Grantee's Franchise Area.
- (3) The Grantee shall not take any retaliatory action against a subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may the Grantee require a Subscriber to waive such rights as a condition of service.

(B) Privacy.

- (1) Neither Grantee nor its subcontractors shall observe or record, or allow any third party to observe or record, the viewing habits or communications of Subscribers without the subscriber's permission. Incidental and unintentional observations by Grantee's staff in the performance of their job responsibilities shall not be considered a violation of this section. Grantee shall not reveal to any third party which Cable Services or communications over the Cable System an individual Subscriber receives. In the event that the annual Subscriber ascertainment indicates 50% of Subscriber have complained about privacy, Grantee shall make such adjustments to its procedures within three months as are reasonably necessary to accommodate the cable-related community needs relating to privacy.

- (2) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits or communications over the Cable System by the name or address of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the express, written consent of the Subscriber to whom the Personalized Data pertains, except as otherwise expressly authorized by federal law. For purposes of this Section, "Personalized Data" means the name and address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.
- (3) Grantee shall be subject to the provisions of federal law regarding limitations on Grantee's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.
- (4) Grantee shall not activate two-way communications from the subscriber without the consent of the Subscriber, and any Cable Service shall be revocable at the discretion of the Subscriber. The Grantee shall not use the two-way communications capability of the system or any other Cable Service for unauthorized or illegal Subscriber surveillance of any kind. Consent, as required herein, shall not be required of any Subscriber by Grantee as a condition of receiving Cable Services.
- (C) Services to People With Disabilities. Grantee shall make Cable Services available to the maximum practical extent to persons with disabilities. Grantee shall provide telecommunication devices for the deaf (TDD) at the cable office during normal business hours and shall disseminate information on the cost and availability of closed-captioning equipment for the hearing impaired and such other services to disabled persons as the City may determine.

- (D) Permission of Property Owner or Tenant for Installation. Grantee shall not install or attach any of its Facilities to any Dwelling Unit or other property without first securing the written permission of the owner or tenant of any property involved, except where there is an existing utility easement reserved by plat or other conveyance. Nothing herein, however, shall excuse the Grantee from obtaining permission from anyone who has the right to approve or disapprove the attachment. If such permission or easement is later revoked, whether by the original or a subsequent owner or tenant, the Grantee, at the owner's or tenant's request, shall promptly remove any of its Facilities and promptly restore the property to its original condition at Grantee's expense. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal. Provision of Cable Service may not be conditioned on any right of entry agreement other than as set forth in this Agreement. This provision shall not affect the Grantee's right to furnish additional consideration in exchange for such a right of entry agreement.

SECTION 11. COMPENSATION AND AUDITING

11.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Rights of Way of the City, the Grantee shall pay annually as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five (5%) percent of Grantee's Gross Revenues.

11.2 Effect of Franchise Fee on City Taxes.

(A) To the extent that the Grantee pays a Utility Business and Occupations (Utility B&O) Tax above the Utility B&O tax rate for telecommunications services, the Grantee shall be credited against the franchise fee obligation as follows:

- (1) For the first three years of the term of this franchise, the credit shall be 75% of the difference between the Grantee's Utility B&O tax rate and the telecommunications Utility B&O tax rate.
- (2) During each year after the third year for the remainder of the life of the Franchise, the credit shall be set by ordinance and shall be a minimum of thirty-seven and one half per cent (37.5%) of the difference between the Grantee's Utility B&O tax rate and the telecommunications Utility B&O tax rate.

(B) Should the City lower (based on the rate of the effective date of this franchise) its business taxes levied on Grantee by an amount equal to four percent (4%) of Grantee's gross revenues, the City may suspend the above credit for the franchise fee and may impose a charge, not to exceed One Dollar (\$1) per month per subscriber, to cover costs for cable related purposes as permitted by law.

Cable-related capital purposes include capital support of PEG channels, Internet routers and an Internet cable connection from Summit's head-end to the City's Internet system. The capital grant shall be deemed an external cost for rate regulation purposes at Summit's option.

(C) Except as specifically provided in this Franchise Agreement, no term or condition in this Franchise shall in any way modify or affect the Grantee's obligation to pay the franchise fee. Although the total sum of franchise fee payments and additional financial and other obligations of this Franchise may exceed five percent of Grantee's Gross Revenues in any twelve month period, Grantee agrees that the sole franchise fee provided for in this Franchise is the franchise fee called for in Section 11.1 and that no other obligation of Grantee under this Franchise constitutes a franchise fee, nor shall any such obligations be offset or credited against any

franchise fee payments due to the City, except as may otherwise be provided by City Ordinance.

11.3 Payments and Quarterly Reports.

- (A) Payments. Grantee's franchise fee payments to the City shall be computed monthly following the effective date of this Franchise for the preceding month. Each monthly payment shall be due and payable with the Utility tax for the same period.
- (B) Monthly Reports. Each payment shall be accompanied by a written report to the City, verified by an officer of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the City and shall include revenue by product category.

11.4 Interest on Late Payments. Payments not received within forty-five (45) days from the month ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date or the highest rate allowed by law, whichever is greater. Late payments due to incorrect calculations shall be assessed an additional charge of 15% of the amount paid late.

11.5 Utility Business and Occupation Tax. Grantee acknowledges that the City has a utility business and occupation tax applicable to cable television under SMC Ch. 5.48. Grantee agrees that this tax is not unduly discriminatory against Cable Operators or subscribers. If Grantee's obligation to pay franchise fees to the City under this Franchise is lawfully suspended or eliminated, in whole or in part, at any time during the term of this Franchise, Grantee shall continue to pay to the City the utility business and occupation tax set forth in SMC Ch. 5.48. Grantee agrees that the utility business and occupation tax set forth in SMC Ch. 5.48:

- (A) is not unduly discriminatory against Cable Operators or cable subscribers;
- (B) is not a franchise fee as defined under 47 USC §542;
- (C) shall not be offset or credited against any franchise fee due the City, except to the extent provided under Section 11.2; and
- (D) shall not represent an increase in franchise fees to be passed through to Subscribers pursuant to 47 USC §542(c).

11.6 Acceptance of Payment and Recomputation.

- (A) No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed within six (6) years of the date payment was due. If the City requests in writing that the Grantee provide, or cause to be provided, any information reasonably within the scope of the audit, and the Grantee fails within 30 days of receipt of the request to provide such information or cause it to be provided, then the six (6) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee such failure continues and Grantee shall pay liquidated damages in the amount of \$500.00 per day of such failure.

11.7 Audits.

- (A) The City reserves the right to conduct audits relating to matters arising under this franchise or to retain an independent Certified Public Accountant to conduct such audits. In the event an audit results in a determination that Grantee has underpaid any obligation arising under this Franchise by more than 5% or materially misstated financial information in any report furnished to the City, Grantee shall reimburse the City for the costs of the audit.
- (B) Grantee shall pay to the City any amounts any audit indicates are owed following an independent review of such audit. Such payment shall be made whether or not the Grantee's obligation for such payment arose before or after the effective date of this Franchise.

11.8 Equivalent rates

- (A) The City shall require of Grantee no more in utility taxes, franchise fees and capital grants than it requires of other similarly situated businesses; i.e., any franchise fee, utility tax, other fee or payment attributable to gross revenues, capital grant or combination thereof charged against Grantee shall not exceed the percentage of gross revenue payable to the City charged against any similar provider of the same product or service subject to the City's jurisdiction and control.

- (B) To illustrate this principle, Internet service shall be deemed a telecommunications service and taxed at the City rate for other telecommunications services (currently 6%). No franchise fee will be collected on this revenue.

SECTION 12. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND.

12.1 Indemnification.

- (A) General Indemnification. Grantee and its Parent Corporations and Affiliated Entities shall indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense arising in whole or in part from, incident to or connected with any act or omission of the Grantee, including without limitation any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee or its Parent Corporations or Affiliated Entities, their agents, or their employees, and including any neglect or omission of Grantee to keep its system in a safe condition. This obligation to indemnify and hold the City harmless shall include the obligation to pay attorneys' fees, expert fees, and all other costs of defending any indemnified claim and all such costs incurred in recovering against Grantee under this indemnity provision. To the maximum extent permitted by law, this indemnity obligation shall not be extinguished or reduced in the event an act or omission of the City is a concurrent cause of the loss, or loss is due to the sole negligence of the City. Grantee and its Parent Corporations and as necessary Affiliated Entities, shall consult and cooperate with the City in the conduct of the City's defense. The City shall fully cooperate with the Grantee and its Parent Corporations Affiliated Entities in said defense.
- (B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities located on City property or right-of-way in a timely manner in accordance with a relocation schedule furnished Grantee by the City in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct.
- (C) Duty to Give Notice and Tender Defense. The City shall give Grantee timely notice of any claim or of the commencement of any action, suit or other proceeding covered by this indemnity. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the right and duty to accept the tender and thereafter to defend, settle or compromise any claims arising hereunder and to pay any judgment or award. The City shall cooperate in the defense.
- (D) Exception to Duty to Tender. The City shall have no obligation to tender a defense where there is a material conflict between the interests of the Grantee and of the City. In this event, timely notice must still be given.

12.2 Insurance.

Grantee shall maintain insurance coverage at all times that is satisfactory to the City. At the time this Franchise begins, Grantee shall have submitted such evidence of its insurance coverage as the City may reasonably require and Grantee shall have made such additions or alterations to its coverage as the City shall require. Grantee shall thereafter provide the City with thirty days' written notice of any anticipated changes in its insurance coverage, and shall not make such changes without the City's written consent. Grantee shall arrange for the City to be an additional named insured on any policies of Grantee designated by the City, and shall also provide such certificates or copies of insurance as the City may request from time to time.

12.3 Construction Performance Bond.

Before beginning any construction work in or under the City streets requiring a street opening permit, Grantee shall furnish a performance bond to the City as is required for street opening permits. The bond shall run to the City, with good and sufficient surety approved by the City, and shall be in a sum equal to the anticipated cost of the work. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements under this Section. The bond shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 13, General Use of and Construction in the Right of Way. Grantee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the construction work. The bond shall provide that it may be terminated upon final approval of Grantee's construction work in or under the City streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section.

12.4 Security Fund/Letter of Credit/Bond

- (A) Security. The Grantee's Franchise shall not become effective until Grantee posts with the City, a Security Fund in the form of a cash security deposit or an irrevocable letter of credit that meets the requirements of the City, or a bond in a form acceptable to the City, or a combination of the three in an amount equal to \$0.75 per subscriber in the City, but in no event less than \$20,000, of which no less than \$5000 shall be in the form of a cash security deposit or letter of credit as specified above. It is the grantee's responsibility to maintain this Security Fund throughout the Franchise term. Before any letter of credit provided to satisfy the Security Fund obligation expires, the Grantee must renew it or replace that letter of credit with a cash deposit, letter of credit, bond or combination of the three in an amount and in a form that satisfies its obligations under this Section.
- (C) Use. The City may draw on the Security Fund to ensure the Grantee's faithful performance of the Franchise in accordance with applicable law. If Grantee fails to perform its obligations under the Franchise in any respect, including making any payment to the City required by this Franchise or by applicable law, including liquidated damages, and reimbursable costs incurred by the City, the City may, after ten (10) days' written notice to the Grantee, withdraw that amount from the Security Fund, a processing fee equal to five percent (5%) of the sum withdrawn and interest for the period between any loss and the withdrawal. The City shall notify the Grantee of the amount and date of the withdrawal.
- (D) Restoration of fund. Within thirty (30) calendar days after the City gives Grantee written notice that an amount has been withdrawn from the Security Fund, the Grantee must deposit a sum of money in the Security Fund sufficient to restore it to the original amount. If Grantee fails to do so, the entire Security Fund amount needed to meet the Grantee's obligations to the community and City may be withdrawn, up to the entire remaining amount, and such failure to restore shall be a material breach of this Franchise.
- (E) Return of Fund. If the Franchise terminates for any reason, and the Grantee has ceased to provide service in the City, the balance of the Security Fund that remains following termination of the Franchise and satisfaction of all of Grantee's obligations secured by the fund shall be returned to Grantee. The City shall be under no obligation to return funds until a reasonable time has elapsed for the City to determine that all such obligations have been satisfied.
- (F) Letter of Credit. Any letter of credit used to satisfy any Portion of the Security Fund requirement must:

- (1) Be issued by a bank licensed to do and doing business in the State of Washington;
- (2) Be irrevocable;
- (3) Provide for automatic renewal of the letter unless the bank has given the City written notice by certified mail at least sixty (60) days prior to expiration of the letter;
- (4) Provide that the City may draw against the letter for any reason and at any time prior to expiration of the letter;
- (5) Provide that the City may draw against the letter and hold the funds in escrow after termination of the franchise
 - (a) if the City has filed an action;
 - (b) if the City has issued a notice and order or sought to draw against the letter prior to termination and Grantee has contested the action or appealed the notice and order; or
 - (c) if the bank or the Grantee has challenged or appealed the draw; and,
- (6) Be in a form acceptable to the City.

SECTION 13. GENERAL USE OF AND CONSTRUCTION IN RIGHT OF WAY

13.1 Relationship with Other Laws. Construction work and maintenance of any and all facilities within the City's Rights of Way shall be done in accordance with the Seattle Municipal Code, including but not limited to, SMC Title 11, SMC Title 15 including Ordinance 116633, and SMC Ch. 21.60; City of Seattle Standard Specifications for Road, Bridge and Municipal Construction; City of Seattle Standard Plans for Municipal Construction; City of Seattle Traffic Control Manual for In-Street Work; Seattle Engineering Department Street and Sidewalk Pavement Opening and Restoration Rules (Director's Rule 94-8); any other applicable ordinance, rule or policy; and any amendments thereto. The provisions of Section 13 are meant to be supplemental to the above provisions. In the event of a conflict between the above provisions and this section, the above provisions shall prevail.

13.2 Construction.

- (A) All construction and maintenance of any and all Facilities within the City's Rights of Way incident to Grantee's Cable System shall be and remain the Grantee's responsibility regardless of who performs the construction. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the City's Rights of Way. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee, and shall pay all inspection fees and other costs incurred by the City as a result of work authorized by such permit.
- (B) Before beginning any construction, Grantee shall provide the City with a construction schedule for work in the City's Rights of Way. As Grantee's construction of Facilities in the City's Rights of Way is completed, Grantee shall periodically provide the City Cable Office with maps showing the location of the installed Facility in the City's Rights of Way, as built.
- (C) Before beginning any work in the City's Rights of Way, Grantee shall apply for and obtain appropriate permits from the City, and give appropriate notices to any other franchisees, licensees or permittees of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

- (D) When Facilities pass over or under private or publicly owned property it shall be Grantee's sole responsibility to obtain all necessary permission from the owner thereof before commencing work, and to notify all utility companies and property owners who may be subject to damage or inconvenience during such work.
- 13.3 Relocation. The City shall have the right to require Grantee to change the design or location of any part of Grantee's Cable System within the City's Rights of Way when the public convenience or public interest would be served by such a change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate or redesign any such Facilities by the date reasonably established by the City, the City may effect such removal or relocation or redesign, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the City's Rights of Way, the City shall provide Grantee with an alternate location within the City's Rights of Way.
- 13.4 Restoration of City's Rights of Way. Whenever Grantee disturbs the surface of any Right of Way for any purpose, the City shall be responsible for restoration of the City's Right of Way and its surface within the area affected by the excavation unless the City authorizes the Grantee in the street use permit to perform such restoration work. The cost of all restoration work, including the cost of inspection and supervision shall be paid by the Grantee. All excavations made by Grantee in the City's Rights of Way shall be properly safeguarded for the prevention of accidents.
- 13.5 Maintenance and Workmanship.
- (A) Grantee's Cable System shall be constructed and maintained so as not to interfere with sewers, water pipes, conduits or any other property of the City, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the City's Rights of Way by or under the City's authority.
 - (B) Grantee shall operate its Cable System so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.
 - (C) Grantee shall not construct its Cable System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Right of Way.

- 13.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any City Right of Way, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any City Rights of Way, the Grantee shall, at the City's request, submit to the City a statement and as-built plans describing all existing Facilities, whether authorized by franchise, permit, license or other prior right, and depicting the location of all such Facilities with such specificity as the City may reasonably require. Such Facilities shall immediately be subject to the terms of this Franchise and shall be brought into compliance with it as soon as practicable, and such additional terms as may be required by the City at the time of the acquisition of such Facilities.
- 13.7 Reservation of City Right of Way Rights. Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City Right of Way, or public work or improvement in the City's Rights of Way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of the Grantee's system will interfere with the construction, maintenance, or repair of any City Right of Way or public work or improvement in the City's Rights of Way, at its own expense the Grantee shall remove or relocate its system as the City directs. Should the Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation and recover the cost thereof from the Grantee, including all costs and expenses incurred by the City due to Grantee's delay.
- 13.8 Reservation of Rights and Privileges. Nothing in this Franchise shall deprive the City of any rights or privileges which it now has, or which may hereafter be conferred upon it, including any rights to regulate and control the use of the Rights of Way.
- 13.9 Use of Conduits by City. The City may install affix and maintain wires and equipment owned by the City for Municipal Purposes upon and otherwise use any and all of Grantee's existing ducts, conduits or equipment in the City's and other public places, without charge to the City, to the extent space is not currently in use, or needed by the Grantee. For the purposes of this Subsection 13.9, "Municipal Purposes" include, but are not limited to, City fire, police, traffic, water, telecommunications, emergency radio, and/or signal systems. The use of such Facilities shall not operate to offset or otherwise affect any financial or other obligation of Grantee.

- 13.10 Street Vacation. If any street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street, Grantee shall, without delay or expense to the City, remove its Facilities from such street and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City.
- 13.11 Additional Conduit. Grantee acknowledges that the City's Rights of Way have a finite capacity for containing conduits and that significant disruption occurs in the Right of Way when additional conduit is added to the Right of Way. In the event that Grantee installs duct or conduit in any Right of Way, Grantee shall provide the City with such additional duct or conduit space over and above the duct or conduits planned to be constructed for the Grantee as may be requested by the City. Such additional ducts or conduits shall be of a size and configuration specified by the City and shall be dedicated to the City. The City shall have the right to use the ducts and conduit for any purpose, including but not limited to leasing them to other entities. The incremental costs of adding the specified ducts and conduits for the City shall be borne by the City.
- 13.12 Discontinuing Use of Facilities. Whenever Grantee intends to discontinue using any Facility or capacity within the City's Rights of Way, Grantee shall submit for the Director of Engineering's approval a complete description of the Facility and the date on which the Grantee intends to discontinue using the Facility or capacity. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such Facility remain in place, the Director of Engineering may require the Grantee to remove the Facility from the City's Right of Way or modify or maintain the Facility or capacity to protect the public health and safety or otherwise serve the public interest. The Director of Engineering may require the Grantee to perform a combination of modification, maintenance, and/or removal of the Facility and/or capacity. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the Director of Engineering. Until such time as Grantee removes or modifies the Facility as directed by the Director of Engineering , or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the City's Right of Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

13.13 Hazardous Substances.

- (A) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Cable System in the City's Rights of Way. For purposes of this Section 13.13, "Hazardous Substances" shall be all substances so characterized in RCW 70.1050.020(5).
- (B) Grantee shall maintain and inspect its Facilities located in the City's Rights of Way and immediately inform the City of any release of Hazardous Substances. Upon reasonable notice to Grantee, the City may inspect Grantee's Facilities in the City's Rights of Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Facilities. In removing or modifying Grantee's Facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances related thereto upon determination that Grantee's owned facilities or activities caused release of hazardous substances.
- (C) Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of Hazardous Substances arising from, connected to or incident to Grantee's Facilities in the City's Rights of Way.

13.14 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cable and other facilities underground. However, Grantee may construct aerially where any other telecommunications or electric utility provider remains aerial. Grantee shall install its cables or other Facilities underground wherever and at the same time existing utilities in the immediate vicinity are installed underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event that utility or a public utility decides to underground its facilities on a voluntary basis, and all other utilities go underground unless the City grants an exception.

13.15 Construction Codes. Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of the Grantee's lines, cables, and other appurtenances from the property in question at Grantee's expense.

- 13.16 Construction and Use of Poles Grantee shall complete a new pole attachment agreement with Seattle City Light to cover all attachment within the Franchise Area that are necessary for the implementation of the Franchise Agreement.
- 13.17 Tree Trimming. The Grantee must submit all pruning plans to the City Arborist for initial review before any work begins. This review may take place concurrently with reviews required by the Seattle Engineering Department by marking submission to SED with the wording "Arborist Review Requested."

SECTION 14. TRANSFER OF GRANTEE'S CABLE SYSTEM

14.1 Prior Consent of City.

- (A) Transfer Defined. For purposes of Section 14.1, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, in whole or in part, and whether voluntary or involuntary.
- (B) City Approval of Transfers.
 - (1) Neither this Franchise nor any substantial property owned and operated by Grantee by authority of this Franchise shall be Transferred without the prior consent of the City. The City's granting of consent in one instance shall not affect the requirement of consent in any other instance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the City an executed counterpart or certified copy thereof. For purposes of this Section, "substantial property" means any property the transfer of which would substantially affect Grantee's operations or which would substantially affect any of Grantee's obligations under this Franchise.
 - (2) In determining whether the City will consent to any Transfer, the City may inquire into the qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any Transfer upon such reasonable conditions it deems appropriate.
 - (3) Nothing contained in Section 14.1 shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets of Grantee's Cable System, including but not limited to accounts receivable, inventory or monetary assets, for the purpose of financing the acquisition of equipment or for the acquisition, construction and operation of Grantee's Cable System, without the City's consent, but any such mortgage, pledge or assignment shall be subject to all other rights of the City under this Franchise. Grantee may also sell tangible assets of Grantee's Cable System in the ordinary course of its business without the consent of the City.
- (C) City Approval of Leases. Grantee shall not lease, sublease, assign or transfer this Franchise or any of the rights or privileges granted or authorized by this Franchise without the City's consent.

- 14.2 Change in Control. Grantee shall promptly notify the City of any proposed Transfer or acquisition by any other party resulting in a change of control of the Grantee or the Parent Corporations. Such change in control shall make this Franchise subject to revocation unless and until the City shall have consented thereto.

SECTION 15. CITY RIGHT TO PURCHASE

15.1 Purchase of Grantee's Cable System After Termination or Expiration.

- (A) Subject to the requirements of federal law, if the City has terminated this Franchise as provided in Section 19, or if the initial term of this Franchise has expired without the franchise being renewed or extended, and if the City has so ordered by ordinance, the Grantee shall continue its operations for a period of up to 270 additional days. During this period, the Grantee shall not Transfer any portion of its Cable System to any other Person, including parts of the system rented, leased or leased-purchased from others by the Grantee, without the prior consent of the City.
- (B) Within 30 days of the effective date of termination or following the expiration of the term of this Franchise, if the City has not otherwise renewed or extended the Franchise, the Grantee shall submit a report (hereafter referred to as the "System Reports") to the City setting out Grantee's assessment of the Fair Market Value of the Assets of Grantee's Cable System, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself, and the methodology, assumptions and limiting conditions underlying the Grantee's appraisal. In addition, Grantee shall provide such further information regarding its technical and customer operations, contractual or other legal obligations, and financial history and current condition as the City may request.
- (C) At any time within 60 days after receiving the System Report, the City may notify the Grantee that it desires to acquire by purchase of Grantee's Cable System.
- (D) For purposes of Section 15.1, the price of Grantee's Cable System shall be determined by mutual agreement between the City and the Grantee. If the City and Grantee are unable to agree within 120 days after the City gives notice of desire to purchase under Section 15.1(C), then the City may demand that such price be determined by arbitration, as provided for in Section 21.2, in which case, following the arbitrator's determination, the City shall have the option to purchase the Cable System for the price determined by the arbitrator. The price shall be the fair market value of the Cable System, taking into account any damages suffered by the City by reason of any breach of the Agreement by Grantee. In the event that the City does not exercise its option to purchase, the City shall pay the costs of the arbitrator.

In the case of the expiration of the Franchise without renewal, fair market value shall be reduced by the amount of any lien, encumbrance, or other obligation of the Grantee which the City may assume.

- (E) In the event of the City's acquisition of all or portions of Grantee's Cable System, as provided in Section 15.1, Grantee, Grantee's Parent Corporations or its Affiliated Entities shall consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's Cable System or any Facilities and shall use all best efforts to obtain consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's Cable System or any Facilities require such consent.

SECTION 16. REGULATION OF RATES AND CHARGES

16.1 City Regulation. Unless prohibited by Federal law, Grantee's rates and charges shall be subject to City regulation and approval.

16.2 Filing of Rates and Charges.

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of all rates and charges related to providing Cable services under this Franchise, in a form satisfactory to the City.

(B) Grantee shall provide a complete schedule of rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels. The schedule shall be in a form satisfactory to the City.

16.3 Changes in Rates and Charges.

(A) Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any proposed changes in rates and charges per the FCC. Grantee's notice to the City and Subscribers shall be in a manner acceptable to the City.

(B) Grantee shall be entitled to increase rates only as provided in this Franchise or by federal law. Grantee and the City shall follow the process for establishing increases in rates and charges set forth in the City's Master Cable Ordinance, SMC Ch. 21.60, as now constituted or hereafter amended. Grantee shall provide all information requested by the City.

16.4 Reasonable Discounts Provided.

(A) Economically Disadvantaged. Grantee shall provide reasonable discounts of not less than \$1.00 on basic tier service rates, 10% of installation charges and 10% on the purchase of a non-addressable converter box, to Subscribers with low incomes as qualified in the City's Rate 26, 27 program, provided that for each \$5.00 increase in the basic tier service rate, the discount shall be increased by \$0.25.

- 16.5 Multiple Unit Buildings. Grantee shall ensure that rates and charges paid by residents of multiple unit buildings shall not exceed the charges paid by residents of single family homes. Grantee may not condition provision of services to multiple unit buildings on any requirement not imposed on other Subscribers, except as expressly provided herein. Grantee may not condition provision of services to multiple unit buildings on an exclusive use agreement with Grantee. Grantee may offer a building owner the option of a long term agreement in return for installation of internal wiring or other telecommunications improvements unique to the building, but must offer the alternative of a no term agreement providing for payment for all installation Costs within thirty days of completion.
- 16.6 Regulation of Equipment for Hearing Impaired. To the extent authorized by law, the City reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of Standard Cable Service by hearing impaired individuals.
- 16.7 Downgrade and Disconnect Charges.
- (A) Downgrade Charges.
- (1) Grantee may impose Downgrade Charges only if the subscriber has been notified, at the time of initiating Cable Services, and annually thereafter, of Grantee's Downgrade Charges.
- (2) Affected subscribers shall have 60 days after a change in service or rates to downgrade their service without charge.
- 16.8 Reserved City Authority. The City reserves all regulatory authority arising from the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Reform Act of 1996. Should this franchise be transferred to an entity that is subject to federal and/or local rate regulations, such regulations shall apply to the full extent permitted by law.

SECTION 17. RECORDS AND REPORTS

17.1 Open Records. Grantee shall maintain a business office within 10 miles of the City for managing the Grantee's Cable System. Grantee shall manage all of its operations so as to create and maintain Records of its operations that are open and accessible to the City. The City shall have the right to inspect all Records of the Grantee and Affiliated Entities at any time during normal business hours and upon reasonable notice. Grantee shall not deny the City access to Grantee's Records on the basis that Grantee's Records are under the control of an Affiliated Entity or a third party, rather than the Grantee. The right of inspection shall include the right, with reasonable notice beforehand, to use Grantee's computer system to read and print such Records, and any software employed by Grantee in the ordinary course of business to manipulate, analyze, save and print such Records.

17.2 Annual Reports.

- (A) Grantee shall Annually present a written report to the City (the "Annual Report"). Grantee shall submit the Annual Report no later than 120 days after the close of its fiscal year. The Annual Report shall include information for the Grantee's operations within the City for the immediately preceding Year, including, but not limited to:
- (B) Changes, additions or deletions made in the Cable System or, which shall be described in the report and noted on a complete and accurate system map, and shall include but not be limited to detail of trunks, distribution lines, nodes and all electronics.
- (C) System ownership, including all levels of Affiliated and Parent Corporations and related ownership percentages;
- (D) An organization chart for Grantee, listing its officers, directors, department heads, and supervisors for major activity centers by category including names positions and business addresses.
- (E) The number of basic tier Subscribers, expanded basic tier Subscribers, pay Subscribers (by service) and pay-to-basic percentages, a summary of all requests for use of public access channels showing the disposition of requests, if the Grantee manages public access, and such data regarding other categories of Subscribers as the City may require which the Grantee can reasonably be expected to provide.
- (F) Cable Services provided on Grantee's Cable System , including services begun or dropped during the previous Year.

- (G) A schedule of all Grantee's rates and charges with notations of changes occurring during the year and the dates of such changes.
- (H) A summary of previous Year's activities, including outreach activities and, if the Grantee manages Public Access, Public Access management activities including profile of programming by type, priority status, summary of equipment usage and wait times, training and outreach activities and staffing.
- (I) For Grantee's Seattle Area Cable Systems: (a) miles of system plant broken out by transmission media; (b) homes passed; (c) numbers of basic and expanded basic subscribers; and (d) number of pay units.
- (J) A statistical summary of telephone responsiveness, identifying on a periodic basis the percent of time the telephone system has all trunks busy, the number of callers to Grantee's Subscriber service or repair lines who fail to reach a Subscriber service representative in less thirty (30) seconds, and providing any other information the City reasonably deems necessary (and maintained by Grantee) to determine if Grantee has met the Performance standards of Section 10.
- (K) All Cable System or outages including date, time, cause, location by street and node or hub, estimated time of repair, actual time of repair, number of affected subscribers and, if relevant, steps taken to prevent a reoccurrence. An outage includes a loss of one or more video or audio channels, but does not include instances where the sound or video is lost prior to its receipt by the Cable System.
- (L) The current complaint procedures followed by the Grantee and a summary of complaints by type.
- (M) Findings from annual proof-of-performance tests, showing performance of the Cable System with respect to applicable FCC technical standards.
- (N) Copies of current forms of contracts between subscribers and the Grantee.

- (O) A copy of any agreement between Grantee, its Parent Corporations or Affiliated Entities and/or third parties involving the use or reservation of any right to use or any portion of the Cable System in connection with the provision of Cable Services or other services to be provided by Grantee, Grantee's Parent Corporations, Affiliated Entities or third parties.
- (P) All reports of audits and investigations conducted to detect illegal connections and other attempts to unauthorized access to Grantee's Cable System, or, if no such reports were prepared, a summary of the results of such audits and investigations.
- (Q) Grantee's development or incorporation of new technology on Grantee's Cable System, such as addressability, interactivity, pay-per-event Programming, teletext, data communications or other entertainment and non-entertainment services.
- (R) Marketing and development of Leased Access Channels and usage patterns for such Channels, if any.
- (S) A description of the progress made in construction and completion of the Cable System Buildout and of any system re-build or upgrade and a comparison of such actual progress with all estimates of progress provided the City.
- (T) Upon request, a list of all material petitions, applications, communications, and reports submitted by the Grantee and its Parent Corporations and Affiliated Entities to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency. Grantee shall make copies of any such Documents and any related communications with the respective agencies available to the City upon request.
- (U) Upon request, a copy of its equal employment opportunity plan filed with or submitted to the FCC, changes to the employment opportunity plan made in the last year, and a report detailing progress with its plan, including staff turnover.

- (V) Financial information as follows shall be made available for inspection and review in the Grantee's office within King County:
- (1) Financial statements for Grantee's Seattle Area Cable System and, separately, for its Cable System within the City, prepared in accordance with generally accepted accounting principles. For purposes of this subsection, "Seattle Area Cable System" means the regional Cable System of which Grantee's Cable System serving the Franchise Area is a part. The financial statements for Grantee's Seattle Area Cable System or larger entity containing this system, shall be audited by an independent Certified Public Accountant.
 - (2) Such other information as the City may request, including, without limitation, copies of accountant working papers prepared in the course of their audit.
 - (3) Forecasts of Subscriber numbers and Gross Revenues by category for the next fiscal Year and number of subscribers starting and canceling service;
 - (4) Planned construction, Buildout upgrade activity of Grantee's Cable System within the City for the current Year and the projected costs of such activity;
 - (5) Annual audited financial statements for the Guarantor;
 - (6) Summit Communications, Inc.'s (or ultimate parent company) Annual corporate reports, including its audited financial statements;
 - (7) A report, in such detail as the City may from time to time require, detailing properties and fixed assets of cable plant within the City by categories, giving its investment in plant based on historical cost and applicable depreciation;
 - (8) Statement describing joint ventures or partnerships in which the Grantee owns at least a 5 percent interest; and,
 - (9) Audited financial statements, annual report and 10-K of the Grantee's ultimate parent company.

17.3 Public Hearing. If directed by the City, the Grantee's Annual Report shall be presented at a public hearing at which Grantee shall summarize the contents of the Annual Report and members of the general public may comment thereon.

17.4 Reports of Regulatory Violations. Grantee shall provide copies to the City of any communications to and from any regulatory agency having jurisdiction over Grantee pertaining to any alleged, apparent or acknowledged violation by Grantee of any applicable rule or law of the agency regarding the Grantee's provision of Cable Services under this Franchise.

17.5 Public Records.

- (A) Grantee acknowledges that information submitted to the City is subject to the Washington Public Disclosures Law, and is open to public inspection.
- (B) Grantee may identify information, such as trade secrets, submitted to the City as confidential. Grantee shall prominently mark any information for which it claims confidentiality with the mark "Confidential", in letters at least one-half (1/2) inch in height, prior to submitting such information to the City. The City shall treat any information so marked as confidential except as provided below. If the City receives a request for confidential information, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. The City shall retain the right to determine whether it is required to release the requested confidential information under applicable law. In the event the City determines that it is required to release all portions of the requested information, the City shall provide the Grantee notice to that effect a minimum of two (2) business days prior to releasing the requested information.

SECTION 18. EQUAL EMPLOYMENT OPPORTUNITY

- 18.1 Non-discrimination and Affirmative Action. During the Performance of this contract, the Grantee agrees as follows:

The Grantee will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

The Grantee will, prior to commencement and during the term of this contract, furnish to the Director of Human Rights (as used herein Director means the Director of the Human Rights Department or his/her designee) upon his/her request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the Grantee in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision.

If upon investigation the Director finds probable cause to believe that the Grantee has failed to comply with any of the terms of these provisions, the Grantee and the contracting authority shall be so notified in writing. The contracting authority shall give the Grantee an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the contract and/or withhold any funds due or to become due to the Grantee, pending compliance by the Grantee with the terms of these provisions.

Failure to comply with any of the terms of these provisions shall be a material breach of this contract.

The foregoing provisions will be inserted in all sub-contracts for work covered by this contract.

- 18.2 Minority and Female Business Enterprises. Grantee shall make every effort to utilize women's business enterprises and minority business enterprises. This

contract hereby incorporates by reference Seattle Municipal Code (SMC) Ch.20.46A (the "Women's & Minority Business Utilization Ordinance"). The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The failure of the contractor or any subcontractor to comply with any of the requirements of SMC Ch.20.46A shall be a material breach of contract. The City in general, and its WMBE Program in particular, are damaged when a contract, or portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with SMC Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside will fairly compensate the City for resulting delays in carrying out the purpose of the Program, the costs of meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

During the term of this contract, the contractor shall:

- (a) meet the WBE and MBE set-aside established for the contract, if any;
- (b) make affirmative efforts to utilize WMBEs in performing the contract, whether as subcontractors, suppliers, or in any other capacity;
- (c) require that all subcontractors make affirmative efforts to utilize WMBEs in performance of the contract;
- (d) maintain records reasonably necessary for monitoring compliance with the provisions of SMC Ch. 20.46A, and submit such information as may be requested by the City's Director of Human Rights in order to monitor and enforce compliance; and,
- (e) require that subcontractors maintain records reasonably necessary for monitoring the subcontractor's compliance with the provisions of SMC Ch. 20.46A, and that the subcontractors submit such information as may be requested by the City's Director of Human Rights in order to monitor and enforce compliance.

SECTION 19. REMEDIES FOR NON-COMPLIANCE

19.1 Termination.

- (A) In the event of a material breach of this Franchise by the Grantee, the City may, without limitation, exercise all rights and remedies provided for herein or otherwise available under the law, including termination of the Franchise. Without limitation, the following shall constitute material breaches of this Franchise:
- (1) Unless otherwise specified by the City, any failure by the Grantee to fully execute and return to the City within 45 days any undisputed orders, contracts, agreements or Documents arising under this Franchise and requiring Grantee's signature or acceptance;
 - (2) Grantee's failure, refusal or neglect to pay the City all amounts due under this Franchise and all other applicable laws, rules and regulations in accordance with the terms of the Franchise, laws, rules and regulation
 - (3) The Grantee's failure, refusal or neglect to pay any required financial support for PEG Access.
 - (4) Any failure by Grantee to provide required Programming and Channel capacity;
 - (5) Any failure by the Grantee to adhere to required schedules for construction and extension or completion of the Buildout of its Cable System, the installation and maintenance of Hardwired Programming Origination Points, Interconnection or other similar requirements;
 - (6) Any failure of Grantee to comply with applicable law;
 - (7) Any material misrepresentation by Grantee in its performance of its obligations or in connection with the granting of this Franchise.
 - (8) Failure of the Grantee to maintain Technical Currency as described in Section 7.1.
 - (9) Failure to comply with Section 5.4 (Ascertainment Process).
 - (10) Failure to indemnify the City and hold it harmless as required by Section 12.

- (B) In the event the City intends to terminate this Franchise pursuant to the previous subsection, the City shall provide a written notice to cure, identifying the nature of the breach, and advising Grantee of the City's intent to terminate the Franchise. If Grantee shall fail to cure any financial breach of the Franchise, including payment to the City of any damages suffered by reason of the breach or any liquidated damages owed under this Franchise, within ten (10) days following its receipt of the notice, then the termination shall become effective upon the expiration of the ten-day cure period. If Grantee fails to cure any non financial breach of this franchise within 30 days following its receipt of the notice, then termination, shall become effective at the expiration of the 30 day period.
- (C) The enumeration of material Franchise provisions set forth in this Section is not exhaustive and shall not be invoked under any guideline for contract interpretation to narrow the scope of other material terms, violation of which would be a material breach of this Franchise.

19.2 Liquidated Damages.

- (A) Amounts of Liquidated Damages. Because the Grantee's failure to comply with provisions of the Franchise will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and the Grantee agree to the following liquidated damages for the following violations. These damages represent the parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 1995 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index.
 - (1) For failure to complete the rebuild requirement in accordance with the Franchise: \$10,000/month for each full month the violation continues.
 - (2) For any transfer subject to the provisions of Section 14 without prior City approval: \$200 for each day the violation continues;
 - (3) For failure to comply with public, educational, and governmental requirements of the franchise and use of the System: \$0.50/subscriber/month not to exceed \$10,000/month;
 - (4) Except as provided in (5) - (6) below, for violation of applicable Subscriber service standards: \$200 per occurrence;
 - (5) For failure to maintain a local office pursuant to the conditions of this franchise: \$1 per subscriber per month, not to exceed \$5000/month.

- (6) For violation of any technical performance standards of this Franchise Agreement: \$500 per occurrence.,
 - (7) For all other material violations of this Agreement: \$500 per occurrence.
- (B) Effect on Duty to Comply. The collection of liquidated damages by the City shall in no respect affect
- (1) Compensation owed to subscribers; or
 - (2) The Grantee's obligation to comply with the provisions of this Franchise or applicable law.
- (C) Accrual. Liquidated damages accrue from the date the violation occurs, not from the date the City determines there has been a violation.
- (D) Cap on Liquidated Damages. The cap on liquidated damages shall be the greater of \$100,000 or \$100 per subscriber for the life of the franchise; but shall not preclude the City from any other remedy under this Franchise or provided by law.

19.3 Relationship of Remedies.

- (A) Non-Exclusivity of Remedies. The remedies provided for in this Franchise and the Master Cable Ordinance are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or the exercise of any rights of the City at law or equity.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Security Fund, or the recovery of amounts under the insurance, indemnity, bonding or liquidated damages provisions of this Franchise shall not be construed as the following: an election of remedies; a limit on the liability of a Grantee under the Franchise for damages or otherwise; or an excuse of faithful performance of any obligation of the Grantee.

19.4 Non-Waiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

- 19.5 Cost Treatment of Fines, Liquidated Damages and Damages. No cost to Grantee arising from a breach or violation of the Agreement shall be recovered from subscribers, shall form the basis for any adjustment to subscriber rates or other subscriber charges or shall be offset against any sums due the City as a tax, franchise fee or otherwise regardless of whether the combination of franchise fees and said costs exceeds five percent of Grantee's Gross Revenues in any twelve-month period.

SECTION 20. REOPENERS

20.1 Grounds. The occurrence of any of the following shall be grounds for the City, in the exercise of its sole discretion, to reopen the Franchise as further provided in this Section:

- (A) Any event that gives rise to a right to terminate the Franchise under any other provision.
- (B) Any court or quasi-judicial action that invalidates or substantially negates the effect of any material provision of this Franchise.
- (C) Any state or federal legislation that invalidates or substantially negates the effect of any material provision of this Franchise.
- (D) Any proposed or actual use of the cable system by Grantee that is not expressly provided for in this Franchise.
- (E) Any ascertainment of present or future cable related community needs and interests that results in a determination that this Franchise no longer reflects such community needs and interests.
- (F) Any changes that trigger the technical and Internet service reopener provisions expressly set forth in this Franchise.

20.2 Reopener Procedure

- (A) The City shall make a determination that grounds exist to implement the reopener provisions of this Section and shall formally notify Grantee in writing of that determination and of the grounds for it.
- (B) For a period of ninety (90) days following Grantee's receipt of the notice, Grantee and the City shall seek to negotiate an amendment to the Franchise reflecting the grounds identified by the City in its notice in light of the cable related community needs and interests and the cost of meeting those needs and interests.
- (C) If Grantee and the City are unable to reach agreement within the ninety-day period, the matter shall be submitted to arbitration, using the arbitration procedure set forth in Section 21.

20.3 Criteria Governing Arbitration Decision

- (A) The arbitrators shall decide whether the City has established a right to a modification of the Franchise based upon the grounds identified by the City Council and in light of the evidence presented to them and, if so, shall prescribe the modification.
- (B) The arbitrators shall make the determination of whether a right to a modification exists, and the nature of any such modification, based on the following criteria:

Whether the particular modification is needed to meet the present and future cable-related community needs and interests, taking into account the cost of meeting those needs and interests.

SECTION 21. MISCELLANEOUS PROVISIONS

21.1 Compliance With Laws.

- (A) Grantee shall comply with all applicable federal and state laws, FCC regulations, and City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.
- (B) Nothing in this Franchise is intended to authorize the Grantee or City to engage in any activity constituting a violation of federal or state antitrust laws, including, but not limited to, the Sherman Act, the Clayton Act, the Robinson-Patman Act or any related amendments or regulatory provisions.
- (C) In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to this Franchise, then the City and the Grantee shall renegotiate the terms of this Franchise subject to the arbitration procedures of this Section.

21.2 Arbitration.

- (A) Whenever the arbitration procedures provided under this Franchise are exercised by the City and the Grantee, the determination of the arbitrators shall be:
 - (1) Final and binding upon both the City and the Grantee under the following sections: Access Channel Lineup; Upgrade or Rebuild, reopener; and Technical ascertainment reopener; Franchise Modification Due to Invalidity or Unenforceability; and Franchise Modification due to Action by Agencies or Courts.
 - (2) Not binding as to arbitration under Section 15.1: Valuation of Cable System, on forfeiture or expiration.
- (B) Either party may initiate arbitration by sending written notice to the other.

- (C) In the event an arbitration is initiated by either party, each party has fifteen (15) days from the date of receipt of written notice, to provide to the other party in writing, a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.
- (D) The City and Grantee shall mutually select three arbitrators from the two lists within five (5) days after the exchange of proposed arbitrators information. If the City and Grantee are unable to agree upon these arbitrators within the time specified herein, then the arbitrators shall be appointed by the Presiding Judge of the King County Superior Court.
- (E) After the arbitrators have been selected, they shall take an oath to serve neutrally and impartially. The arbitrators shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and the Grantee. Wherever possible, Grantee and the City shall make good faith efforts to stipulate to material facts and take other actions to limit the costs of the arbitration. The hearing shall occur not less than one hundred (100) days after the appointment of the arbitrators except for good cause shown. The arbitrators shall make a written report to the City and the Grantee on their final determination within thirty (30) days after completion of the hearing. The determination of the arbitrators shall constitute a final arbitration determination.
- (F) The arbitration shall be conducted in Seattle, Washington, in accordance with the then-existing rules of the American Arbitration Association but not under the auspices or control of the AAA. Judgment upon any award by the arbitrators may be entered by the state or federal court having jurisdiction.
- (G) The cost of the arbitration shall be divided equally between the City and the Grantee. Each party shall be responsible for its own other costs.

21.3 Severability.

If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.

21.4 No Recourse Against City.

Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief.

21.5 Action by Agencies or Courts.

Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Washington or any court with competent jurisdiction requires the Grantee to act inconsistently with any provisions of this Franchise. Upon receipt of such notification, the City or the Grantee may determine if a material provision of this Franchise has been affected. Upon such determination, the City or Grantee may seek to modify or amend this Franchise as may be necessary to carry out the parties' intentions and purposes under this Franchise.

21.6 Other Cable Franchises.

The City shall not be limited or prevented by any provision in this Franchise from issuing any franchise, permit, license or other agreement of any kind for all of Grantee's Franchise Area or any portion thereof, to other cable providers.

21.7 Choice of Forum.

Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

21.8 Notice.

Any notice provided for under this franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City: Department of Administrative Services
Office of Cable Communications
City of Seattle
Alaska Building - 12th Floor
Seattle, Washington 98104

If to the Grantee:

Summit Communications, Inc.
3633 136th Place Southeast Suite 107
Bellevue, Washington 98006
Attn: Robert J. Erickson

APPENDIX B

I. Designated Access Manager Obligations.

- (A) Public Access Facility. In the event the City designates the Grantee as Public Access Manager, the Grantee shall operate all Public Access Facilities provided for by this franchise to the satisfaction of the City.
- (B) Programming Limitations. The Grantee may not prohibit Access to the Public Access Channels by non-commercial Programmers and Programming except to the extent authorized by 47 USC §532(h) as it may from time to time be amended or to the extent otherwise provided by law. For as long as it is designated as the Public Access Provider, the Grantee will provide equal opportunity Access except as provided below:
 - (1) Residents of the jurisdictions contributing to the Public Access program shall be given preference over non-residents.
 - (2) Programming produced in and relating to the Pacific Northwest shall be given preference with the following hierarchy within such Programming based upon place of origination: Seattle, Washington State, Pacific Northwest.
 - (3) Grantee may give a preference to live Programming over recorded Programming to the extent that live Programming is of a kind that is normally viewed only during certain times of the day (e.g., talk shows).
 - (4) Grantee shall maintain an appropriate balance between one-time shows and series.
- (C) Rules for Equipment and Facilities. To the greatest possible extent, Grantee will involve the Telecommunication Advisory and Public Access Programming Producers in the development and application of rules concerning Public Access, as well as rules on the use of Public Access equipment and facilities.
- (D) Public Access Management Performance Standards. For as long as the Grantee is designated as the Public Access Manager, the Grantee will meet each of the following performance standards with respect to its management of Public Access. Grantee shall schedule all programming for public access channels. Grantee shall:

(1) Outreach

- (a) Assist public access staff in scheduling and regular orientation and training classes that instruct users about equipment, facilities and programming. Classes shall be scheduled per Appendix C.
- (b) Coordinate outreach activities, consistent with those set forth in the Franchise Agreement, Section 7.2(C).

(2) Equipment Operation

- (a) Maintain an inventory of all equipment showing acquisition date, producer reports of malfunctions, how malfunctions were addressed, regular maintenance and repairs, days of downtime and planned replacement date;
- (b) Maintain an annual average of less than five business days of downtime for each piece of equipment. If downtime of any single piece of equipment exceeds 10 business days in any one year it shall be replaced immediately;
- (c) Maintain a log of Public Access Facility users, showing names, addresses, equipment used, and length of usage.
- (d) Prepare, provide to the City and follow a schedule of regular preventive maintenance on equipment, including a replacement schedule for equipment.

(3) Staffing.

- (a) Provide a minimum of 0.5 Full Time Equivalent (FTE) staff persons for outreach;
- (b) Provide sufficient personnel as determined by the City to assist producers with production and post-production and to manage the Public Access Facility.

(4) Facility Hours

- (a) Keep Public Access Facilities open from 10:00 a.m. - 8:00 p.m. each weekday and 10:00 a.m. - 6:00 p.m. each weekend day. Other hours may be implemented by the Grantee subject to City approval but the total number of consecutive hours shall not be reduced.

- (b) Make portable and post-production equipment available for check-out or use during all Facility hours;

(5) Wait Time

- (a) Ensure that the average period producers must wait for studio time to tape a program does not exceed five business days and that no producer must wait more than 10 business days to use a Facility for Access;
- (b) Ensure that the average period producers must wait to check out portable equipment does not exceed three business days and that no producer must wait more than seven business days to use portable equipment; and
- (c) Ensure that the average period producers must wait for post-production equipment does not exceed three business days and that no producer must wait more than seven business days to use post-production equipment.

II. PEG Access Support Not Franchise Fees.

(A) New operating costs incurred in satisfaction of the requirements of this Appendix may be offset against franchise fees paid, to the extent provided by federal law. The City shall have the right to review any such claimed offsets, and to submit disputes arising from Grantee's offset claims to the arbitration provisions set forth in Section 21.2 of the Franchise.

(B) City's Disposition of Funds. To the extent such treatment may be authorized by federal law, the City may expend funds received under Section 11.2 for Access purposes other than non-operating Access costs without offsetting or crediting such expenditures against the franchise fee.

APPENDIX C: Public Access Classes

Courses will be offered by the Grantee when requested by ten or more people. The Grantee will offer each course at least six times per year.

Pre-production

Script-writing.

3 hours, minimum. Course to include how to organize a script, different script formats, writing for video and marking a script for video.

Production Planning.

3 hours, minimum. Course to include assessing the audience, determining production needs, getting organized, working with a crew, preparing for the shoot, logging complete footage, preparing to edit and promoting the program.

Production

Individual Camera and Lighting.

2 hours, minimum. Course to include viewing instructional videos and/or reading materials and individual practice on equipment with staff available to provide assistance.

Basic Video Production.

3 hours, minimum. Course to include instruction in shooting and editing a basic film-style sequence.

Intermediate Video Production.

3 hours, minimum. Course to include hands-on production of a short video.

Camera Skills.

3 hours, minimum. Course to involve instruction and practice in performing camera shots, moves, effects and techniques.

Introduction to Lighting.

2 hours, minimum. Course to cover basic lighting techniques, terminology and safety.

Introduction to Field Audio.

2 hours, minimum. Course to include discussion of the different types of microphones and how they are used, terminology and how to solve audio problems.

Post-production

Individual Editing.

4 hours, minimum. Course to include viewing instructional videos and/or reading material and individual practice on equipment with staff available to provide assistance.

Basic Editing.

3 hours, minimum. Course to include basic editing concepts. control track and how to use editing machines.

Intermediate Editing.

3 hours, minimum. Course to include aesthetics of editing, tricks of the trade and addressing student questions and concerns.

*General***Private Consultation.**

Producers should have the opportunity to schedule a one-hour private session with a staff member to evaluate work-in-progress or completed project.

Public Access Program Guide

Grantee shall publish a monthly program guide to public access programming, including one-sentence descriptions of each program. Grantee shall regularly mail program guide to all subscribers who request it. Grantee shall offer the program guide to new subscribers and publicize its availability annually through an insert in monthly service bills.